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INTRODUCED BY    Senator Sher

DECEMBER 7, 1998

An act to amend Sections 7507.13, 22911, 22912, 22914, 22916, 22917, 22921, and 22922 of the Business and Professions Code, to amend Sections 954.5, 955, 955.1, 1799.100, 1799.103, 1812.601, 2924f, 2944, 2983.8, 3343.5, 3439.08, 3440.1, and 3440.5 of the Civil Code, to amend Sections 481.020, 481.030, 481.040, 481.080, 481.090, 481.115, 481.117, 481.207, 481.220, 488.375, 488.385, 488.405, 488.500, 680.120, 680.130, 680.140, 680.170, 680.180, 680.210, 680.220, 680.340, 680.350, 697.530, 697.580, 697.590, 697.610, 697.640, 697.650, 697.660, 697.730, 697.740, 697.750, 697.920, 701.040, 730.5, and 2103 of the Code of Civil Procedure, to amend Sections 1105, 1201, 1206, 2103, 2210, 2326, 2502, 2716, 4210, 6102, 6103, 7503, 8103, 8106, 8110, 8301, 8302, 8510, 8603, 10103, 10303, 10307, 10309, 13102, 13105, and 14106 of, to add Section 5118 to, to repeal and add Division 9 (commencing with Section 9101) of, and to repeal and add Section 9321 of, the Commercial Code, to amend Section 911 of the Family Code, to amend Section 22337 of the Financial Code, to amend Sections 21855, 55702, 57405, 57408, 57409, 57411, 57516, 57517, 57519, 57530, 57531, 57540, 57567, 57568, 57570, 57581, 57582, and 57590 of the Food and Agricultural Code, to amend Sections 7153, 7154, 7157, 7159, 7170, 7222, 7226, 14735, 16201, 27282, and 54985 of the Government Code, to amend Sections 18035, 18035.2, 18037.5, 18080.7, 18093, 18105, 18106, and 18122 of the

Health and Safety Code, to amend Sections 504b, 538, and 574 of the Penal Code, to amend Sections 843 and 844 of the Public Utilities Code, to amend Sections 6703, 7855, 8957, 11452, 18671, 30315, 32387, 38503, 40155, 41123.5, 43444.2, 45605, 46406, 50136, 55205, and 60407 of the Revenue and Taxation Code, and to amend Section 1755 of the Unemployment Insurance Code, relating to secured transactions, and making an appropriation therefor.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 45, Sher. Commercial law: secured transactions.

Existing provisions of the Commercial Code govern security interests in personal property and fixtures, as well as certain sales of accounts, contract rights, and chattel paper.

This bill would, as of July 1, 2001, repeal those provisions and replace them with new provisions concerning those subjects. Among other things, the new provisions would (1) broaden the scope of covered transactions and collateral, (2) expand the duties of secured parties relating to the release of control and the provision of information to debtors with respect to collateral and the obligations it secures, (3) change certain choice-of-law rules and other requirements regarding the perfection of security interests, (4) revise and add certain new priority rules for secured interests generally and certain special priority rules relating to banks and deposit accounts, (5) revise provisions relative to the relationships between certain 3rd parties and the parties to secured transactions, (6) enact new provisions governing the assignment of certain types of collateral, (7) revise specified filing requirements and financing statement requisites, and impose certain new reporting and other duties on the Secretary of State in connection with these changes, and (8) change certain default and enforcement rules.

This bill would appropriate \$128,000 from the Secretary of State's Business Fees Fund to the Secretary of State to implement these new provisions. It would revise cross-references and make related changes in several codes to conform to the bill.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7507.13 of the Business and Professions Code is amended to read:

7507.13. (a) A licensed repossession agency is not liable for the act or omission of a legal owner, debtor, lienholder, lessor, or lessee in making an assignment to it or for accepting an assignment from any legal owner, debtor, lienholder, lessor, or lessee and is entitled to indemnity from the legal owner, debtor, lienholder, lessor, or lessee for any loss, damage, cost, or expense, including court costs and attorney's fees, that it may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(b) The legal owner, debtor, lienholder, lessor, or lessee is not liable for any act or omission by a licensed repossession agency in carrying out an assignment and is entitled to indemnity from the repossession agency for any loss, damage, cost, or expense, including court costs and attorney's fees, that the legal owner, debtor, lienholder, lessor, or lessee may reasonably incur as a result thereof. Nothing in this subdivision limits the liability of any person for his or her tortious conduct.

(c) The legal owner, debtor, lienholder, lessor, or lessee is not guilty of a violation of Section 7502.1 or 7502.2 if, at the time of the assignment, the party making the assignment has in its possession a copy of the reposessor's current, unexpired repossession agency license, and a copy of the current, unexpired repossession agency's qualified manager's certificate, and does not have actual knowledge of any order of suspension or revocation of the license or certificate.

(d) Neither a licensed repossession agency nor a legal owner, debtor, lienholder, lessor or lessee may, by any means, direct or indirect, express or implied, instruct or attempt to coerce the other to violate any law, regulation, or rule regarding the recovery of any collateral, including, but not limited to, the provisions of this chapter or Section 9609 of the Commercial Code.

SEC. 1.1. Section 22911 of the Business and Professions Code is amended to read:

22911. The notice of a claim of lien shall be filed on a form which is the standard form for the original financing statement prescribed by the Secretary of State pursuant to Section 9502 of the Commercial Code. The standard form shall be completed with the following changes:

(a) The lien claimant may be identified either as a lien claimant or as a secured party.

(b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.

(c) In the space for the description of the collateral there shall instead be entered the information specified in subdivisions (c), (d), (e), and (g) of Section 22909.

(d) Attached to the form shall be a separately signed statement containing the information specified in subdivision (f) of Section 22909.

SEC. 1.2. Section 22912 of the Business and Professions Code is amended to read:

22912. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Sections 9516 and 9519 of the Commercial Code.

SEC. 1.3. Section 22914 of the Business and Professions Code is amended to read:

22914. For the purpose of the Secretary of State's index pursuant to Sections 9516 and 9519 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9523 or 9528 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

SEC. 1.4. Section 22916 of the Business and Professions Code is amended to read:

22916. A member of the public may obtain a certificate from the Secretary of State identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of the filing of each notice, and the names and addresses of each lienholder in the certificate. The fee for the certificate is the same as the fee for the certificate issued pursuant to Section 9523 of the Commercial Code.

SEC. 1.5. Section 22917 of the Business and Professions Code is amended to read:

22917. A member of the public may obtain a copy of any notice of an equipment repurchase lien, including notices affecting the notices from the Secretary of State. The fee for these copies shall be the same as that prescribed in Section 9525 of the Commercial Code.

SEC. 1.6. Section 22921 of the Business and Professions Code is amended to read:

22921. (a) A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment or transfer with the office of the Secretary of State in the same manner that a statement is filed pursuant to Section 9514 of the Commercial Code.

SEC. 1.7. Section 22922 of the Business and Professions Code is

amended to read:

22922. (a) Except to the extent specifically set forth in this chapter, the lien created by this chapter is subject to Division 9 (commencing with Section 9101) of the Commercial Code.

(b) For the purposes of this chapter, as used in Division 9 (commencing with Section 9101) of the Commercial Code, the following terms have the following meanings:

(1) "Secured party" refers to the equipment dealer, lien creditor, lien claimant, or assignee thereof under this chapter.

(2) "Debtor" refers to the supplier, lien debtor, or debtor under this chapter.

(3) "Collateral" refers to the equipment subject to the lien created under this chapter.

(c) A security agreement is not necessary to make an equipment repurchase lien created under this chapter enforceable.

(d) An equipment repurchase lien created under this chapter shall not continue in the repurchased equipment following the disposition thereof.

(e) The right of an equipment dealer to enforce the lien created under this chapter shall be governed by this chapter and shall not be governed by Chapter 6 (commencing with Section 9601) of Division 9 of the Commercial Code.

SEC. 1.8. Section 954.5 of the Civil Code is amended to read:

954.5. (a) Subject to subdivisions (b) and (c), a transfer of a right represented by a judgment excluded from coverage of Division 9 of the Commercial Code by paragraph (9) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee who first becomes an assignee of record, by filing an acknowledgment of assignment of judgment with the court as provided in Section 673 of the Code of Civil Procedure or otherwise becoming an assignee of record, has priority.

(c) The filing of an acknowledgment of assignment of the judgment with the court under Section 673 of the Code of Civil Procedure is not, of itself, notice to the judgment debtor so as to invalidate any payments made by the judgment debtor that would otherwise be applied to the satisfaction of the judgment.

SEC. 2. Section 955 of the Civil Code is amended to read:

955. A transfer other than one intended to create a security interest (paragraph (1) or (3) of subdivision (a) of Section 9109 of the Commercial Code) of a nonnegotiable instrument which is otherwise negotiable within Division 3 of the Commercial Code but which is not

payable to order or to bearer and a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose (paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code) shall be deemed perfected against third persons when such property rights have been endorsed or assigned in writing and in the case of such instruments or chattel paper delivered to the transferee, whether or not notice of such transfer or sale has been given to the obligor; but such endorsement, assignment, or delivery is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

SEC. 3. Section 955.1 of the Civil Code is amended to read:

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one intended to create a security interest (paragraph (1) or (3) of subdivision (a) of Section 9109 of the Commercial Code) of any payment intangible (Section 9102 of the Commercial Code) and any transfer of accounts, chattel paper, payment intangibles, or promissory notes excluded from the coverage of Division 9 of the Commercial Code by paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing has priority.

(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

(d) This section does not apply to transfers or assignments of transition property, as defined in Section 840 of the Public Utilities Code.

SEC. 3.5. Section 1799.100 of the Civil Code is amended to read:

1799.100. (a) It is unlawful for any person to take a security interest in any household goods, as defined in subdivision (g), in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes unless (1) the person takes possession of the household goods or (2) the purchase price of the household goods was financed through the consumer credit contract or credit obligation.

(b) An agreement or other document creating a nonpossessory security interest in personal property as defined in subdivision (d) in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall contain a statement of description reviewed and signed

by the consumer indicating each specific item of the personal property in which the security interest is taken. A consumer credit contract or other credit obligation subject to the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2) that complies with the provisions of subdivision (a) of Section 1803.3, or of subdivision (f) of Section 1810.1, shall be deemed to comply with this subdivision.

(c) Notwithstanding any other provision of law, a person who has a nonpossessory security interest in personal property, described in subdivision (d), taken in connection with a consumer credit contract or other credit obligation incurred primarily for personal, family, or household purposes shall only enforce the security interest by judicial action unless the property is abandoned or freely and voluntarily surrendered by the consumer.

(d) The provisions of subdivisions (b) and (c) apply only to the following types of personal property:

(1) Any goods, as defined in paragraph (44) of subdivision (a) of Section 9102 of the Commercial Code, except for vessels, vehicles, and aircraft, that are used or bought for use primarily for personal, family, or household purposes and that has a fair market value of less than one thousand dollars (\$1,000) per individual item at the time the security interest is created.

(2) The property described in Section 704.050 and subdivision (a) of Section 704.060 of the Code of Civil Procedure, except for vessels, vehicles, and aircraft.

(e) Any security interest taken in violation of either subdivision (a) or (b) is void and unenforceable.

(f) Any person injured by a violation of this section may bring a civil action for the recovery of damages, equitable relief, and attorney's fees and costs.

(g) For the purpose of this section:

(1) "Household goods" means and includes clothing, furniture, appliances, one radio, one television, linens, china, crockery, kitchenware, personal effects, and wedding rings. "Household goods" does not include works of art, electronic entertainment equipment (except one radio and one television), items acquired as antiques, and jewelry (except wedding rings).

(2) "Antique" means any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

SEC. 4. Section 1799.103 of the Civil Code is amended to read:

1799.103. No consumer credit contract or guarantee of a consumer credit contract shall provide for a security interest in any investment property, as defined in paragraph (49) of subdivision (a)

of Section 9102 of the Commercial Code, that is pledged as collateral, unless (a) the contract either specifically identifies the investment property as collateral or (b) the secured party is a securities intermediary, as defined in paragraph (14) of subdivision (a) of Section 8102 of the Commercial Code, or commodity intermediary, as defined in paragraph (17) of subdivision (a) of Section 9102 of the Commercial Code, with respect to the investment property. The identification of an account shall include the name of the holder, account number, and name of the institute holding the investment property. In the event that a consumer credit contract or guarantee does not comply with this section, the security interest in the investment property is void.

SEC. 5. Section 1812.601 of the Civil Code is amended to read:

1812.601. (a) "Advertisement" means any of the following:

(1) Any written or printed communication for the purpose of soliciting, describing, or offering to act as an auctioneer or provide auction company services, including any brochure, pamphlet, newspaper, periodical, or publication.

(2) A telephone or other directory listing caused or permitted by an auctioneer or auction company to be published that indicates the offer to practice auctioneering or auction company services.

(3) A radio, television, or similar airwave transmission that solicits or offers the practice of auctioneering or auction company services.

(b) "Auction" means a sale transaction conducted by means of oral or written exchanges between an auctioneer and the members of his or her audience, which exchanges consist of a series of invitations for offers for the purchase of goods made by the auctioneer and offers to purchase made by members of the audience and culminate in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience. However, auction does not include either of the following:

(1) A wholesale motor vehicle auction subject to regulation by the Department of Motor Vehicles.

(2) A sale of real estate or a sale in any sequence of real estate with personal property or fixtures or both in a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code.

(c) "Auction company" means any person who arranges, manages, sponsors, advertises, accounts for the proceeds of, or carries out auction sales at locations, including, but not limited to, any fixed location, including an auction barn, gallery place of business, sale barn, sale yard, sale pavilion, and the contiguous surroundings of each.



(d) "Auctioneer" means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction.

(e) "Employee" means an individual who works for an employer, is listed on the employer's payroll records, and is under the employer's control.

(f) "Employer" means a person who employs an individual for wages or salary, lists the individual on the person's payroll records, and withholds legally required deductions and contributions.

(g) "Goods" means any goods, wares, chattels, merchandise, or other personal property, including domestic animals and farm products.

(h) "Person" means an individual, corporation, partnership, trust, including a business trust, firm, association, organization, or any other form of business enterprise.

SEC. 6. Section 2924f of the Civil Code is amended to read:

2924f. (a) As used in this section and Sections 2924g and 2924h, "property" means real property or a leasehold estate therein, and "calendar week" means Monday through Saturday, inclusive.

(b) (1) Except as provided in subdivision (c), before any sale of property can be made under the power of sale contained in any deed of trust or mortgage, or any resale resulting from a rescission for a failure of consideration pursuant to subdivision (c) of Section 2924h, notice of the sale thereof shall be given by posting a written notice of the time of sale and of the street address and the specific place at the street address where the sale will be held, and describing the property to be sold, at least 20 days before the date of sale in one public place in the city where the property is to be sold, if the property is to be sold in a city, or, if not, then in one public place in the judicial district in which the property is to be sold, and publishing a copy once a week for three consecutive calendar weeks, the first publication to be at least 20 days before the date of sale, in a newspaper of general circulation published in the city in which the property or some part thereof is situated, if any part thereof is situated in a city, if not, then in a newspaper of general circulation published in the judicial district in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district, as the case may be, in a newspaper of general circulation published in the county in which the property or some part thereof is situated, or in case no newspaper of general circulation is published in the city or judicial district or county, as the case may be, in a newspaper of general circulation published in the county in

this state that (A) is contiguous to the county in which the property or some part thereof is situated and (B) has, by comparison with all similarly contiguous counties, the highest population based upon total county population as determined by the most recent federal decennial census published by the Bureau of the Census. A copy of the notice of sale shall also be posted in a conspicuous place on the property to be sold at least 20 days before the date of sale, where possible and where not restricted for any reason. If the property is a single-family residence the posting shall be on a door of the residence, but, if not possible or restricted, then the notice shall be posted in a conspicuous place on the property; however, if access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the property may be posted at that guard gate or similar impediment to any development community. Additionally, the notice of sale shall conform to the minimum requirements of Section 6043 of the Government Code and be recorded with the county recorder of the county in which the property or some part thereof is situated at least 14 days prior to the date of sale. The notice of sale shall contain the name, street address, and telephone number of the trustee or other person conducting the sale, and the name of the original trustor, and also shall contain the statement required by paragraph (3) of subdivision (c). In addition to any other description of the property, the notice shall describe the property by giving its street address, if any, or other common designation, if any, and a county assessor's parcel number; but if the property has no street address or other common designation, the notice shall contain a legal description of the property, the name and address of the beneficiary at whose request the sale is to be conducted, and a statement that directions may be obtained pursuant to a written request submitted to the beneficiary within 10 days from the first publication of the notice. Directions shall be deemed reasonably sufficient to locate the property if information as to the location of the property is given by reference to the direction and approximate distance from the nearest crossroads, frontage road, or access road. If a legal description or a county assessor's parcel number and either a street address or another common designation of the property is given, the validity of the notice and the validity of the sale shall not be affected by the fact that the street address, other common designation, name and address of the beneficiary, or the directions obtained therefrom are erroneous or that the street address, other common designation, name and address of the beneficiary, or directions obtained therefrom are omitted. The term "newspaper of general circulation," as used in this section, has the same meaning as defined in Article 1 (commencing with Section 6000)

of Chapter 1 of Division 7 of Title 1 of the Government Code.

The notice of sale shall contain a statement of the total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs, expenses, advances at the time of the initial publication of the notice of sale, and, if republished pursuant to a cancellation of a cash equivalent pursuant to subdivision (d) of Section 2924h, a reference of that fact; provided, that the trustee shall incur no liability for any good faith error in stating the proper amount, including any amount provided in good faith by or on behalf of the beneficiary. An inaccurate statement of this amount shall not affect the validity of any sale to a bona fide purchaser for value, nor shall the failure to post the notice of sale on a door as provided by this subdivision affect the validity of any sale to a bona fide purchaser for value.

(2) If the sale of the property is to be a unified sale as provided in subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, the notice of sale shall also contain a description of the personal property or fixtures to be sold. In the case where it is contemplated that all of the personal property or fixtures are to be sold, the description in the notice of the personal property or fixtures shall be sufficient if it is the same as the description of the personal property or fixtures contained in the agreement creating the security interest in or encumbrance on the personal property or fixtures or the filed financing statement relating to the personal property or fixtures. In all other cases, the description in the notice shall be sufficient if it would be a sufficient description of the personal property or fixtures under Section 9108 of the Commercial Code. Inclusion of a reference to or a description of personal property or fixtures in a notice of sale hereunder shall not constitute an election by the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, shall not obligate the secured party to conduct a unified sale pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code, and in no way shall render defective or noncomplying either that notice or a sale pursuant to that notice by reason of the fact that the sale includes none or less than all of the personal property or fixtures referred to or described in the notice. This paragraph shall not otherwise affect the obligations or duties of a secured party under the Commercial Code.

(c) (1) This subdivision applies only to deeds of trust or mortgages which contain a power of sale and which are secured by real property containing a single-family, owner-occupied residence, where

the obligation secured by the deed of trust or mortgage is contained in a contract for goods or services subject to the provisions of the Unruh Act (Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3).

(2) Except as otherwise expressly set forth in this subdivision, all other provisions of law relating to the exercise of a power of sale shall govern the exercise of a power of sale contained in a deed of trust or mortgage described in paragraph (1).

(3) If any default of the obligation secured by a deed of trust or mortgage described in paragraph (1) has not been cured within 30 days after the recordation of the notice of default, the trustee or mortgagee shall mail to the trustor or mortgagor, at his or her last known address, a copy of the following statement:

YOU ARE IN DEFAULT UNDER A

\_\_\_\_\_,  
(Deed of trust or mortgage)  
DATED \_\_\_\_\_. UNLESS YOU TAKE ACTION TO PROTECT  
YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE.  
IF YOU NEED AN EXPLANATION OF THE NATURE OF THE  
PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

(4) All sales of real property pursuant to a power of sale contained in any deed of trust or mortgage described in paragraph (1) shall be held in the county where the residence is located and shall be made to the person making the highest offer. The trustee may receive offers during the 10-day period immediately prior to the date of sale and if any offer is accepted in writing by both the trustor or mortgagor and the beneficiary or mortgagee prior to the time set for sale, the sale shall be postponed to a date certain and prior to which the property may be conveyed by the trustor to the person making the offer according to its terms. The offer is revocable until accepted. The performance of the offer, following acceptance, according to its terms, by a conveyance of the property to the offeror, shall operate to terminate any further proceeding under the notice of sale and it shall be deemed revoked.

(5) In addition to the trustee fee pursuant to Section 2924c, the trustee or mortgagee pursuant to a deed of trust or mortgage subject to this subdivision shall be entitled to charge an additional fee of fifty dollars (\$50).

(6) This subdivision applies only to property on which notices of default were filed on or after the effective date of this subdivision.

SEC. 7. Section 2944 of the Civil Code is amended to read:

2944. None of the provisions of this chapter applies to any transaction or security interest governed by the Commercial Code, except to the extent made applicable by reason of an election made by the secured party pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 9604 of the Commercial Code.

SEC. 8. Section 2983.8 of the Civil Code is amended to read:

2983.8. Notwithstanding Section 2983.2 or any other provision of law, no deficiency judgment shall lie in any event in any of the following instances:

(a) After any sale of any mobilehome for which a permit is required pursuant to Section 35780 or 35790 of the Vehicle Code for failure of the purchaser to complete his or her conditional sale contract given to the seller to secure payment of the balance of the purchase price of such mobilehome. The provisions of this subdivision shall not apply in the event there is substantial damage to the mobilehome other than wear and tear from normal usage. This subdivision shall apply only to contracts entered into on or after the effective date of the act that enacted this subdivision and before July 1, 1981.

(b) After any sale or other disposition of a motor vehicle unless the court has determined that the sale or other disposition was in conformity with the provisions of this chapter and the relevant provisions of Division 9 (commencing with Section 9101) of the Commercial Code, including Sections 9610, 9611, 9612, 9613, 9614, 9615, and 9626. The determination may be made upon an affidavit unless the court requires a hearing in the particular case.

SEC. 8.5. Section 3343.5 of the Civil Code is amended to read:

3343.5. (a) Any one or more of the following who suffers any damage proximately resulting from one or more acts of unlawful motor vehicle subleasing, as described in Chapter 12.7 (commencing with Section 570) of Title 13 of Part 1 of the Penal Code, may bring an action against the person who has engaged in those acts:

(1) A seller or other secured party under a conditional sale contract or a security agreement.

(2) A lender under a direct loan agreement.

(3) A lessor under a lease contract.

(4) A buyer under a conditional sale contract.

(5) A purchaser under a direct loan agreement, an agreement which provides for a security interest, or an agreement which is equivalent to these types of agreements.

(6) A lessee under a lease contract.

(7) An actual or purported transferee or assignee of any right or

interest of a buyer, a purchaser, or a lessee.

(b) The court in an action under subdivision (a) may award actual damages; equitable relief, including, but not limited to, an injunction and restitution of money and property; punitive damages; reasonable attorney's fees and costs; and any other relief which the court deems proper.

(c) As used in this section, the following terms have the following meanings:

(1) "Buyer" has the meaning set forth in subdivision (c) of Section 2981.

(2) "Conditional sale contract" has the meaning set forth in subdivision (a) of Section 2981. Notwithstanding subdivision (k) of Section 2981, "conditional sale contract" includes any contract for the sale or bailment of a motor vehicle between a buyer and a seller primarily for business or commercial purposes.

(3) "Direct loan agreement" means an agreement between a lender and a purchaser whereby the lender has advanced funds pursuant to a loan secured by the motor vehicle which the purchaser has purchased.

(4) "Lease contract" means a lease contract between a lessor and lessee as this term and these parties are defined in Section 2985.7. Notwithstanding subdivision (d) of Section 2985.7, "lease contract" includes a lease for business or commercial purposes.

(5) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code.

(6) "Person" means an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(7) "Purchaser" has the meaning set forth in subdivision (33) of Section 1201 of the Commercial Code.

(8) "Security agreement" and "secured party" have the meanings set forth, respectively, in paragraphs (73) and (72) of subdivision (a) of Section 9102 of the Commercial Code. "Security interest" has the meaning set forth in subdivision (37) of Section 1201 of the Commercial Code.

(9) "Seller" has the meaning set forth in subdivision (b) of Section 2981, and includes the present holder of the conditional sale contract.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies provided by law.

SEC. 9. Section 3439.08 of the Civil Code is amended to read:

3439.08. (a) A transfer or an obligation is not voidable under subdivision (a) of Section 3439.04, against a person who took in good faith and for a reasonably equivalent value or against any

subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following:

(1) The first transferee of the asset or the person for whose benefit the transfer was made.

(2) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subdivision (b) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to the following:

(1) A lien on or a right to retain any interest in the asset transferred.

(2) Enforcement of any obligation incurred.

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (b) of Section 3439.04 or Section 3439.05 if the transfer results from the following:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.

(2) Enforcement of a lien in a noncollusive manner and in compliance with applicable law, including Division 9 (commencing with Section 9101) of the Commercial Code, other than a retention of collateral under Sections 9620 and 9621 of the Commercial Code and other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation.

SEC. 10. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine

cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms "transferor" in lieu of "debtor" and "transferee" in lieu of "secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

(i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.

(j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and (2) is so far perfected under that statute



or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

(k) A transfer of personal property in connection with a transaction in which the property is immediately thereafter leased by the transferor from the transferee provided the transferee purchased the property for value and in good faith (subdivision (c) of Section 10308 of the Commercial Code).

(l) Transition property, as defined in Section 840 of the Public Utilities Code.

SEC. 11. Section 3440.5 of the Civil Code is amended to read:

3440.5. (a) This chapter does not affect the rights of a secured party who, for value and in good faith, acquires a security interest in the transferred personal property from the transferee, or from the transferee's successor in interest, if the transferor is no longer in possession of the personal property at the time the security interest attaches.

(b) Additionally, except as provided in Section 3440.3, this chapter does not affect the rights of a secured party who acquires a security interest from the transferee, or from the transferee's successor in interest, in the personal property, if all of the following conditions are satisfied:

(1) On or before the date the security agreement is executed, the intended debtor or secured party files a financing statement with respect to the property transferred, signed by the intended debtor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but shall use the terms "transferor" in lieu of "debtor," "transferee" in lieu of "secured party," and "secured party" in lieu of "assignee of secured party." The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to such a statement. For the purpose of indexing, and in any certification of search, the Secretary of State may refer to any financing statement filed pursuant to this paragraph as a financing statement under the Commercial Code and may describe the transferor as a debtor and the transferee as a secured party.

Compliance with this paragraph shall, however, not perfect the security interest of the secured party. Perfection of such a security interest shall be governed by Division 9 (commencing with Section 9101) of the Commercial Code.

(2) The intended debtor or secured party publishes a notice of the transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if

there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date of execution by the intended debtor of the intended security agreement. The notice shall contain the names and addresses of the transferor and transferee and of the intended debtor and secured party, a general statement of the character of the personal property transferred and intended to be subject to the security interest, the location of the personal property, and the date on or after which the security agreement is to be executed by the intended debtor.

SEC. 11.5. Section 481.020 of the Code of Civil Procedure is amended to read:

481.020. "Account debtor" means "account debtor" as defined in paragraph (3) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 12. Section 481.030 of the Code of Civil Procedure is amended to read:

481.030. "Account receivable" means "account" as defined in paragraph (2) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 12.1. Section 481.040 of the Code of Civil Procedure is amended to read:

481.040. "Chattel paper" means "chattel paper" as defined in paragraph (11) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 12.2. Section 481.080 of the Code of Civil Procedure is amended to read:

481.080. "Deposit account" means "deposit account" as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 12.3. Section 481.090 of the Code of Civil Procedure is amended to read:

481.090. "Document of title" means "document" as defined in paragraph (30) of subdivision (a) of Section 9102 of the Commercial Code. A document of title is negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

SEC. 13. Section 481.115 of the Code of Civil Procedure is amended to read:

481.115. "General intangibles" means "general intangibles," as defined in paragraph (42) of subdivision (a) of Section 9102 of the Commercial Code, consisting of rights to payment.

SEC. 13.1. Section 481.117 of the Code of Civil Procedure is amended to read:

481.117. "Instrument" means "instrument" as defined in paragraph (47) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 13.2. Section 481.207 of the Code of Civil Procedure is amended to read:

481.207. "Secured party" means "secured party" as defined in paragraph (72) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 13.3. Section 481.220 of the Code of Civil Procedure is amended to read:

481.220. "Security agreement" means a "security agreement" as defined by paragraph (73) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 13.4. Section 488.375 of the Code of Civil Procedure is amended to read:

488.375. (a) Except as provided by Section 488.385, to attach equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the office of the Secretary of State a notice of attachment, in the form prescribed by the Secretary of State, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specified property of the defendant.

(b) Upon presentation of a notice of attachment under this section for filing, and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(c) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of attachment filed against the equipment of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice and any notice affecting any such notice of attachment and the name and address of the plaintiff. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment. The certificate shall be issued as part of a combined certificate pursuant to Section 9528 of the Commercial Code, and the

fee for the certificate and copies shall be in accordance with that section.

(d) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9525 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a statement of release under Section 9525 of the Commercial Code.

(e) If property subject to an attachment lien under this section becomes a fixture (as defined in Section 9313 of the Commercial Code), the attachment lien under this section is extinguished.

SEC. 13.5. Section 488.385 of the Code of Civil Procedure is amended to read:

488.385. (a) To attach a vehicle or vessel for which a certificate of ownership has been issued by the Department of Motor Vehicles, or a mobilehome or commercial coach for which a certificate of title has been issued by the Department of Housing and Community Development, which is equipment of a going business in the possession or under the control of the defendant, the levying officer shall file with the appropriate department a notice of attachment, in the form prescribed by the appropriate department, which shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the specific property attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the specific property of the defendant.

(b) Upon presentation of a notice of attachment, notice of extension, or notice of release under this section for filing and tender of the filing fee to the appropriate department, the notice shall be filed and indexed. The fee for filing and indexing the notice is three dollars (\$3).

(c) Upon the request of any person, the department shall issue its certificate showing whether there is on file in that department on the date and hour stated therein any notice of attachment filed against the property of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. The fee for the certificate issued pursuant to this subdivision is three dollars (\$3). Upon request, the department shall furnish a copy of any notice of attachment or

notice affecting a notice of attachment for a fee of one dollar (\$1) per page.

(d) If property subject to an attachment lien under this section becomes a fixture (as defined in paragraph (41) of subdivision (a) of Section 9102 of the Commercial Code), the attachment lien under this section is extinguished.

SEC. 14. Section 488.405 of the Code of Civil Procedure is amended to read:

488.405. (a) This section provides an alternative method of attaching farm products or inventory of a going business in the possession or under the control of the defendant, but this section does not apply to property described in Section 488.325. This section applies if the plaintiff instructs the levying officer to attach the farm products or inventory under this section.

(b) To attach under this section farm products or inventory of a going business in the possession or under the control of the defendant, the levying officer shall file a notice of attachment with the Secretary of State.

(c) Except as provided in subdivisions (d) and (e), the filing of the notice of attachment gives the plaintiff an attachment lien on all of the following:

- (1) The farm products or inventory described in the notice.
- (2) Identifiable cash proceeds (as that term is used in Section 9315 of the Commercial Code).
- (3) If permitted by the writ of attachment or court order, after-acquired property.

(d) The attachment lien created by the filing of the notice of attachment under this section does not extend to either of the following:

- (1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.
- (2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of attachment or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to an attachment lien under this section becomes a fixture (as defined in paragraph (41) of subdivision (a) of Section 9102 of the Commercial Code), the attachment lien under this section is extinguished.

(f) The notice of attachment shall be in the form prescribed by the Secretary of State and shall contain all of the following:

- (1) The name and mailing address of the plaintiff.
- (2) The name and last known mailing address of the defendant.
- (3) The title of the court where the action is pending and the cause and number of the action.
- (4) A description of the farm products and inventory attached.
- (5) A statement that the plaintiff has acquired an attachment lien on the described property and on identifiable cash proceeds (as that term is used in Section 9315 of the Commercial Code) and, if permitted by the writ of attachment or court order, on after-acquired property.

(g) Upon presentation of a notice of attachment under this section for filing and tender of the filing fee to the office of the Secretary of State, the notice of attachment shall be filed, marked, and indexed in the same manner as a financing statement. The fee for filing in the office of the Secretary of State is the same as the fee for filing a financing statement in the standard form.

(h) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of attachment filed against the farm products or inventory of a particular person named in the request. If a notice of attachment is on file, the certificate shall state the date and hour of filing of each such notice of attachment and any notice affecting any such notice of attachment and the name and address of the plaintiff. Upon request, the Secretary of State shall furnish a copy of any notice of attachment or notice affecting a notice of attachment. The certificate shall be issued as part of a combined certificate pursuant to Section 9528 of the Commercial Code, and the fee for the certificate and copies shall be in accordance with that section.

(i) The fee for filing, indexing, and furnishing filing data for a notice of extension of attachment is the same as the fee for a continuation statement under Section 9525 of the Commercial Code. The fee for filing, indexing, and furnishing filing data for a notice of release of attachment is the same as the fee for a statement of release under Section 9519 of the Commercial Code.

SEC. 15. Section 488.500 of the Code of Civil Procedure is amended to read:

488.500. (a) A levy on property under a writ of attachment

creates an attachment lien on the property from the time of levy until the expiration of the time provided by Section 488.510.

(b) Except as provided in subdivisions (c) and (d), if property subject to an attachment lien is transferred or encumbered, the property transferred or encumbered remains subject to the lien after the transfer or encumbrance to the same extent that the property would remain subject to an execution lien pursuant to Sections 697.720 to 697.750, inclusive.

(c) Except as otherwise provided in this title, if equipment is attached pursuant to Section 488.375 or farm products or inventory is attached pursuant to Section 488.405, the attachment lien on the property covered by the attachment lien has the same force and effect as a judgment lien on personal property created at the same time would have pursuant to Sections 697.590 to 697.620, inclusive.

(d) If equipment consisting of a vehicle, vessel, mobilehome, or commercial coach is attached pursuant to Section 488.385, the attachment lien on the specified property does not affect the rights of a person who is a bona fide purchaser or encumbrancer and obtains possession of both the property and its certificate of ownership issued by the Department of Motor Vehicles or its certificate of title or registration card issued by the Department of Housing and Community

Development. If the levying officer obtains possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the priority of the lien of a lien creditor under Sections 9317 and 9323 of the Commercial Code as of the time possession is obtained by the levying officer. If the levying officer does not obtain possession of the certificate of ownership or certificate of title or registration card, the attachment lien has the same force and effect as an unperfected security interest that attached at the same time as the notice of attachment was filed.

(e) If an attachment lien is created on property that is subject to the lien of a temporary protective order or a lien under Article 1 (commencing with Section 491.110) of Chapter 11, the priority of the attachment lien relates back to the date the earlier lien was created. Nothing in this subdivision affects priorities or rights of third persons established while the lien of the temporary protective order or the lien under Article 1 (commencing with Section 491.110) of Chapter 11 was in effect as determined under the law governing the effect of such lien.

SEC. 15.5. Section 680.120 of the Code of Civil Procedure is amended to read:

680.120. "Account debtor" means "account debtor" as defined in

paragraph (3) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 16. Section 680.130 of the Code of Civil Procedure is amended to read:

680.130. "Account receivable" means "account" as defined in paragraph (2) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 16.1. Section 680.140 of the Code of Civil Procedure is amended to read:

680.140. "Chattel paper" means "chattel paper" as defined in paragraph (11) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 16.2. Section 680.170 of the Code of Civil Procedure is amended to read:

680.170. "Deposit account" means "deposit account" as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 16.3. Section 680.180 of the Code of Civil Procedure is amended to read:

680.180. "Document of title" means "document" as defined in paragraph (30) of subdivision (a) of Section 9102 of the Commercial Code. A document of title is negotiable if it is negotiable within the meaning of Section 7104 of the Commercial Code.

SEC. 17. Section 680.210 of the Code of Civil Procedure is amended to read:

680.210. "General intangibles" means "general intangibles," as defined in paragraph (42) of subdivision (a) of Section 9102 of the Commercial Code, consisting of rights to payment.

SEC. 17.1. Section 680.220 of the Code of Civil Procedure is amended to read:

680.220. "Instrument" means "instrument", as defined in paragraph (47) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 17.2. Section 680.340 of the Code of Civil Procedure is amended to read:

680.340. "Secured party" means "secured party" as defined in paragraph (72) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 17.3. Section 680.350 of the Code of Civil Procedure is amended to read:

680.350. "Security agreement" means "security agreement" as defined in paragraph (73) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 17.4. Section 697.530 of the Code of Civil Procedure is amended to read:



697.530. (a) A judgment lien on personal property is a lien on all interests in the following personal property that are subject to enforcement of the money judgment against the judgment debtor pursuant to Article 1 (commencing with Section 695.010) of Chapter 1 at the time the lien is created if a security interest in the property could be perfected under the Commercial Code by filing a financing statement at that time with the Secretary of State:

- (1) Accounts receivable.
- (2) Chattel paper.
- (3) Equipment.
- (4) Farm products.
- (5) Inventory.
- (6) Negotiable documents of title.

(b) If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired.

(c) To the extent provided by Section 697.620, a judgment lien on personal property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien.

(d) Notwithstanding any other provision of this section, the judgment lien does not attach to:

(1) A vehicle or vessel required to be registered with the Department of Motor Vehicles or a mobilehome or commercial coach required to be registered pursuant to the Health and Safety Code.

(2) The inventory of a retail merchant held for sale except to the extent that the inventory of the retail merchant consists of durable goods having a unit retail value of at least five hundred dollars (\$500). For the purposes of this paragraph, "retail merchant" does not include (A) a person whose sales for resale exceeded 75 percent in dollar volume of the person's total sales of all goods during the 12 months preceding the filing of the notice of judgment lien on personal property or (B) a cooperative association organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code (agricultural cooperative associations) or Part 3 (commencing with Section 13200) of Division 3 of Title 1 of the Corporations Code (Fish Marketing Act).

(e) If property subject to a lien under this article becomes a fixture (as defined in paragraph (41) of subdivision (a) of Section 9102 of the Commercial Code), the judgment lien on such property is extinguished.

(f) Notwithstanding the filing of a notice of judgment lien, subject to the provisions of Chapter 6 (commencing with Section

708.010), a person obligated on an account receivable or chattel paper is authorized to pay or compromise the amount without notice to or consent of the judgment creditor unless and until there is a levy pursuant to Chapter 3 (commencing with Section 699.010).

SEC. 17.5. Section 697.580 of the Code of Civil Procedure is amended to read:

697.580. (a) Upon the request of any person, the Secretary of State shall issue a certificate showing whether there is on file in that office on the date and hour stated therein any notice of judgment lien on personal property filed against the property of a particular person named in the request. If a notice of judgment lien is on file, the certificate shall state the date and hour of filing of each such notice and any notice affecting any such notice of judgment lien and the name and address of the judgment creditor.

(b) Upon request, the Secretary of State shall furnish a copy of any notice of judgment lien or notice affecting a notice of judgment lien. The certificate shall be issued as part of a combined certificate pursuant to Section 9528 of the Commercial Code, and the fee for the certificate and copies shall be in accordance with that section.

SEC. 18. Section 697.590 of the Code of Civil Procedure is amended to read:

697.590. (a) As used in this section:

(1) "Filing" means:

(A) With respect to a judgment lien on personal property, the filing of a notice of judgment lien in the office of the Secretary of State to create a judgment lien on personal property under this article.

(B) With respect to a security interest, the filing of a financing statement pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(2) "Perfection" means perfection of a security interest pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(3) "Personal property" means:

(A) With respect to a judgment lien on personal property, the property to which a judgment lien has attached pursuant to this article.

(B) With respect to a security interest, the collateral subject to a security interest pursuant to Division 9 (commencing with Section 9101) of the Commercial Code.

(4) "Purchase money security interest" means "purchase money security interest" as defined in Section 9103 of the Commercial Code.

(b) Except as provided in subdivisions (d) and (e), priority between a judgment lien on personal property and a conflicting security interest in the same personal property shall be determined according to this subdivision. Conflicting interests rank according to priority in time of filing or perfection. In the case of a judgment lien, priority dates from the time filing is first made covering the personal property. In the case of a security interest, priority dates from the time a filing is first made covering the personal property or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(c) For the purposes of subdivision (b), a date of filing or perfection as to personal property is also a date of filing or perfection as to proceeds.

(d) A purchase money security interest has priority over a conflicting judgment lien on the same personal property or its proceeds if the purchase money security interest is perfected at the time the judgment debtor (as a debtor under the security agreement) receives possession of the personal property or within 20 days thereafter.

(e) If a purchase money security interest in inventory has priority over a judgment lien pursuant to subdivision (d) and a conflicting security interest has priority over the purchase money security interest in the same inventory pursuant to Section 9324 of the Commercial Code, the conflicting security interest also has priority over the judgment lien on the inventory subject to the purchase money security interest notwithstanding that the conflicting security interest would not otherwise have priority over the judgment lien.

(f) A judgment lien that has attached to personal property and that is also subordinate under subdivision (b) to a security interest in the same personal property is subordinate to the security interest only to the extent that the security interest secures advances made before the judgment lien attached or within 45 days thereafter or made without knowledge of the judgment lien or pursuant to a commitment entered into without knowledge of the judgment lien.

For the purpose of this subdivision, a secured party shall be deemed not to have knowledge of a judgment lien on personal property until (1) the judgment creditor serves a copy of the notice of judgment lien on the secured party personally or by mail and (2) the secured party has knowledge of the judgment lien on personal property, as "knowledge" is defined in Section 1201 of the Commercial Code. If service on the secured party is by mail, it shall be sent to the secured party at the address shown in the financing statement

or security agreement.

SEC. 19. Section 697.610 of the Code of Civil Procedure is amended to read:

697.610. Except as provided in Sections 9617 and 9622 of the Commercial Code, a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property, unless the person receiving the property is one of the following:

(a) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9320 of the Commercial Code, would take free of a security interest created by the seller.

(b) A lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) who, under Section 9321 of the Commercial Code, would take free of a security interest created by the lessor.

(c) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(d) A purchaser of chattel paper who, under Section 9330 of the Commercial Code, would have priority over another security interest in the chattel paper.

SEC. 20. Section 697.640 of the Code of Civil Procedure is amended to read:

697.640. (a) The judgment creditor, judgment debtor, owner of property subject to a judgment lien on personal property created under the judgment, or a person having a security interest in or a lien on the property subject to the judgment lien, may file in the office of the Secretary of State an acknowledgment of satisfaction of judgment executed as provided in Section 724.060 or a court clerk's certificate of satisfaction of judgment issued pursuant to Section 724.100, together with a statement containing the name of the judgment creditor, the name and address of the judgment debtor, and the file number of the notice of judgment lien. Upon such filing, the judgment lien created under the judgment that has been satisfied is extinguished as a matter of record. The fee for filing the acknowledgment or certificate is the same as the fee for filing a termination statement under Section 9404 of the Commercial Code.

(b) The filing officer shall treat an acknowledgment of satisfaction of judgment, or court clerk's certificate of satisfaction of judgment, and statement filed pursuant to this section in the same manner as a termination statement filed pursuant to Section 9525 of the Commercial Code.

SEC. 21. Section 697.650 of the Code of Civil Procedure is amended

to read:

697.650. (a) The judgment creditor may by a writing do any of the following:

(1) Release the judgment lien on all the personal property subject to the lien of a sole judgment debtor or of all the judgment debtors.

(2) If the notice of judgment lien names more than one judgment debtor, release the judgment lien on all the personal property subject to the lien of one or more but of less than all the judgment debtors.

(3) Release the judgment lien on all or a part of the personal property subject to the lien.

(4) Subordinate to a security interest or other lien or encumbrance the judgment lien on all or a part of the personal property subject to the judgment lien.

(b) A statement of release or subordination is sufficient if it is signed by the judgment creditor and contains the name and address of the judgment debtor, the file number of the notice of judgment lien, and wording appropriate to bring the statement within one of the paragraphs of subdivision (a). In the case of a release under paragraph (3) of subdivision (a), the statement of release shall also describe the property being released. In the case of a subordination under paragraph (4) of subdivision (a), the statement of subordination shall also describe the property on which the judgment lien is being subordinated and describe the security interest or other lien or encumbrance to which the judgment lien is being subordinated.

(c) The filing officer shall treat the filing of a statement of release pursuant to paragraph (1) of subdivision (a) of this section in the same manner as a termination statement filed pursuant to Sections 9513 and 9519 of the Commercial Code. The filing officer shall treat the filing of a statement of release pursuant to paragraph (2) of subdivision (a) of this section in the same manner as a comparable amendment filed pursuant to Sections 9512 and 9519 of the Commercial Code. The filing officer shall treat the filing of a statement of release pursuant to paragraph (3) of subdivision (a) of this section and the filing of a statement of subordination filed pursuant to paragraph (4) of subdivision (a) of this section in the same manner as a statement of release filed pursuant to Sections 9512 and 9519 of the Commercial Code.

(d) The fee for filing the statement is the same as that provided in Section 9525 of the Commercial Code.

SEC. 21.5. Section 697.660 of the Code of Civil Procedure is amended to read:

697.660. (a) If a notice of judgment lien on personal property filed in the office of the Secretary of State appears to create a judgment lien on personal property of a person who is not the judgment debtor because the name of the property owner is the same as or similar to that of the judgment debtor, the erroneously identified property owner or a person having a security interest in or a lien on the property may deliver to the judgment creditor a written demand that the judgment creditor file in the office of the Secretary of State a statement releasing the lien as to the property of such owner. The demand shall be accompanied by proof to the satisfaction of the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment against the judgment debtor.

(b) Within 15 days after receipt of the demand and proof satisfactory to the judgment creditor that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the judgment creditor shall file in the office of the Secretary of State a statement releasing the lien on the property of such owner. If the judgment creditor improperly fails to file the statement of release within the time allowed, the judgment creditor is liable to the person who made the demand for all damages sustained by reason of such failure and shall also forfeit one hundred dollars (\$100) to such person.

(c) If the judgment creditor does not file a statement of release pursuant to subdivision (b), the person who made the demand may apply to the court on noticed motion for an order releasing the judgment lien on the property of such owner. Notice of motion shall be served on the judgment creditor. Service shall be made personally or by mail. Upon presentation of evidence to the satisfaction of the court that the property owner is not the judgment debtor and that the property is not subject to enforcement of the judgment, the court shall order the judgment creditor to prepare and file the statement of release or shall itself order the release of the judgment lien on the property of such owner. The court order may be filed in the office of the Secretary of State with the same effect as the statement of release demanded under subdivision (a).

(d) The court shall award reasonable attorney's fees to the prevailing party in any action or proceeding maintained pursuant to this section.

(e) The damages provided by this section are not in derogation of any other damages or penalties to which an aggrieved person may be entitled by law.

(f) The fee for filing a statement of release or court order under this section is the same as that provided in Section 9525 of the

Commercial Code.

SEC. 22. Section 697.730 of the Code of Civil Procedure is amended to read:

697.730. (a) Subject to Section 701.630 and except as provided in subdivision (b), if tangible personal property subject to an execution lien is in the custody of a levying officer and is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance.

(b) If a levy upon tangible personal property of a going business is made by the levying officer placing a keeper in charge of the business, a purchaser or lessee of property subject to the execution lien takes the property free of the execution lien if the purchaser or lessee is one of the following:

(1) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9320 of the Commercial Code, would take free of a security interest created by his or her seller.

(2) A lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) who, under Section 9321 of the Commercial Code, would take free of a security interest created by the lessor.

SEC. 23. Section 697.740 of the Code of Civil Procedure is amended to read:

697.740. Except as provided in Sections 9617 and 9622 of the Commercial Code and in Section 701.630, if personal property subject to an execution lien is not in the custody of a levying officer and the property is transferred or encumbered, the property remains subject to the lien after the transfer or encumbrance except where the transfer or encumbrance is made to one of the following persons:

(a) A person who acquires an interest in the property under the law of this state for reasonably equivalent value without knowledge of the lien. For purposes of this subdivision, value is given for a transfer or encumbrance if, in exchange for the transfer or encumbrance, property is transferred or an antecedent debt is secured or satisfied.

(b) A buyer in ordinary course of business (as defined in Section 1201 of the Commercial Code) who, under Section 9320 of the Commercial Code, would take free of a security interest created by the seller or encumbrancer.

(c) A lessee in ordinary course of business (as defined in paragraph (15) of subdivision (a) of Section 10103 of the Commercial Code) or a licensee in the ordinary course of business (as defined in subdivision (a) of Section 9321 of the Commercial Code) who, under

Section 9321 of the Commercial Code, would take free of a security interest created by the lessor or the licensor.

(d) A holder in due course (as defined in Section 3302 of the Commercial Code) of a negotiable instrument within the meaning of Section 3104 of the Commercial Code.

(e) A holder to whom a negotiable document of title has been duly negotiated within the meaning of Section 7501 of the Commercial Code.

(f) A protected purchaser (as defined in Section 8303 of the Commercial Code) of a security or a person entitled to the benefits of Section 8502 or 8510 of the Commercial Code.

(g) A purchaser of chattel paper who gives new value and takes possession of the chattel paper in good faith and in the ordinary course of the purchaser's business or a purchaser of an instrument who gives value and takes possession of the instrument in good faith.

(h) A holder of a purchase money security interest (as defined in Section 9103 of the Commercial Code).

(i) A collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4210 of the Code.

(j) A person who acquires any right or interest in letters of credit, advices of credit, or money.

(k) A person who acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

SEC. 23.1. Section 697.750 of the Code of Civil Procedure is amended to read:

697.750. Notwithstanding Section 697.740, except as provided in Section 9617 of the Commercial Code and in Section 701.630, if (1) growing crops, (2) timber to be cut, or (3) minerals or the like (including oil or gas) to be extracted or accounts receivable resulting from the sale thereof at wellhead or minehead are subject to an execution lien and are transferred or encumbered, the property remains subject to the execution lien after the transfer or encumbrance.

SEC. 23.2. Section 697.920 of the Code of Civil Procedure is amended to read:

697.920. Except as provided in Section 9617 of the Commercial Code and in Section 701.630, a lien described in Section 697.910 continues on property subject to the lien, notwithstanding the transfer or encumbrance of the property subject to the lien, unless



the transfer or encumbrance is made to a person listed in Section 697.740.

SEC. 24. Section 701.040 of the Code of Civil Procedure, as amended by Section 17 of Chapter 932 of the Statutes of 1998, is amended to read:

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Section 9615 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

(c) This section shall be repealed on January 1, 2002.

SEC. 24.5. Section 701.040 of the Code of Civil Procedure, as added by Section 1.5 of Chapter 1125 of the Statutes of 1990, is amended to read:

701.040. (a) Except as otherwise ordered by the court upon a determination that the judgment creditor's lien has priority over the security interest, if property levied upon is subject to a security interest that attached prior to levy, the property or obligation is subject to enforcement of the security interest without regard to the levy unless the property is in the custody of the levying officer; but, if the execution lien has priority over the security interest, the secured party is liable to the judgment creditor for any proceeds received by the secured party from the property to the extent of the execution lien.

(b) After the security interest is satisfied, the secured party shall deliver any excess property, and pay any excess payments or proceeds of property, remaining in the possession of the secured party to the levying officer for the purposes of the levy, as provided in Section 9615 of the Commercial Code, unless otherwise ordered by the court or directed by the levying officer.

SEC. 25. Section 730.5 of the Code of Civil Procedure is amended to read:

730.5. Except as otherwise provided by Section 9604 of the

Commercial Code, none of the provisions of this chapter or of Section 580a, 580b, 580c, or 580d applies to any security interest in personal property or fixtures governed by the Commercial Code.

SEC. 25.5. Section 2103 of the Code of Civil Procedure is amended to read:

2103. (a) If a notice of federal lien, a refile of a notice of federal lien, or a notice of revocation of any certificate described in subdivision (b) is presented to a filing officer who is:

(1) The Secretary of State, he or she shall cause the notice to be marked, held, and indexed in accordance with the provisions of Sections 9515, 9516, and 9522 of the Commercial Code as if the notice were a financing statement within the meaning of that code; or

(2) A county recorder, he or she shall accept for filing, file for record in the manner set forth in Section 27320 of the Government Code, and index the document by the name of the person against whose interest the lien applies in the general index.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he or she shall:

(1) Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Commercial Code.

(c) If a refiled notice of federal lien referred to in subdivision (a) or any of the certificates or notices referred to in subdivision (b) is presented for filing to a county recorder, he or she shall accept for filing, file for record in the manner set forth in Section 27320 of the Government Code, and index the document by the name of the person against whose interest the lien applies in the general index.

(d) Upon request of any person, the filing officer shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed after January 1, 1968, under this title or former Chapter 14 (commencing with Section 7200) of Division 7 of Title 1 of the Government Code, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien. If the filing officer is a

county recorder, the fee for a certificate for each name searched shall be set by the filing officer in an amount that covers actual costs, but that, in no event, exceeds fifteen dollars (\$15), and the fee for copies shall be in accordance with Section 27366 of the Government Code. If the filing officer is the Secretary of State, the certificate shall be issued as part of a combined certificate pursuant to Section 9528 of the Commercial Code, and the fee for the certificate and copies shall be in accordance with that section.

SEC. 26. Section 1105 of the Commercial Code is amended to read:

1105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this code applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2402.

Applicability of the division on leases. Sections 10105 and 10106.

Applicability of the division on bank deposits and collections. Section 4102.

Letters of credit. Section 5116.

Bulk sales subject to the division on bulk sales. Section 6103.

Applicability of the division on investment securities. Section 8110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9301 to 9307, inclusive.

SEC. 26.5. Section 1201 of the Commercial Code is amended to read:

1201. The following definitions apply for purposes of this code, subject to additional definitions contained in the subsequent divisions of this code that apply to specific divisions or chapters thereof, and unless the context otherwise requires:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances,

including course of dealing, usage of trade, and course of performance as provided in this code (Sections 1205, 2208, and 10207). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable, and otherwise by the law of contracts (Section 1103). (Compare "contract.")

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a "bill of lading" is conclusive evidence of that intention. "Bill of lading" includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 (commencing with Section 2101) may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous." A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color, except that in a telegram any stated term is "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation that results from the parties' agreement as affected by this code and any other applicable rules of law. (Compare "agreement.")

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery," with respect to instruments, documents of title, chattel paper, or certificated securities, means the voluntary transfer of possession.

(15) "Document of title" includes a bill of lading, dock warrant, dock receipt, warehouse receipt, gin ticket, or compress receipt, and any other document that, in the regular course of business or financing, is treated as adequately evidencing that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document shall purport to be issued by a bailee and purport to cover goods in the bailee's possession that either are identified as or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible," with respect to goods or securities, means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods that are not fungible shall be deemed fungible for the purposes of this code to the extent that, under a particular agreement or document, unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder," with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the

identified person is in possession. "Holder," with respect to a document of title, means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay or, where a credit so engages, to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary course of business, cannot pay his or her debts as they become due, or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) A person has "notice" of a fact when any of the following occurs:

(a) He or she has actual knowledge of it.

(b) He or she has received a notice or notification of it.

(c) From all the facts and circumstances known to him or her at the time in question, he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn," or a word or phrase of similar import, refers to knowledge rather than to reason to know.

The time and circumstances under which a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking those steps that may be reasonably required to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when any of the following occurs:

(a) It comes to his or her attention.

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of these communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his or her attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the

person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of his or her regular duties, or unless he or she has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this division.

(30) "Person" includes an individual or an organization. (See Section 1102.)

(31) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(32) "Purchaser" means a person who takes by purchase.

(33) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(34) "Representative" includes an agent, an officer of a corporation or association, a trustee, executor, or administrator of an estate, or any other person empowered to act for another.

(35) "Rights" includes remedies.

(36) (a) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. The term also includes any interest of a cosignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Division 9 (commencing with Section 9101). The special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Division 9 (commencing with Section 9101). Except as otherwise provided in Section 2505, the right of a seller or lessor of goods under Article 2 (commencing with Section 2101) or Article 10 (commencing with Section 10101) to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 (commencing with Section 9101). The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Section 2401) is limited in effect to a reservation of a "security interest."

(b) Whether a transaction creates a lease or security interest is determined by the facts of each case. However, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and any of the following conditions applies:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods.

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods.

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(c) A transaction does not create a security interest merely because it provides one or more of the following:

(i) That the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or greater than the fair market value of the goods at the time the lease is entered into.

(ii) That the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods.

(iii) That the lessee has an option to renew the lease or to become the owner of the goods.

(iv) That the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed.

(v) That the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(vi) In the case of a motor vehicle, as defined in Section 415 of the Vehicle Code, or a trailer, as defined in Section 630 of that code, that is not to be used primarily for personal, family, or household purposes, that the amount of rental payments may be increased or decreased by reference to the amount realized by the lessor upon sale or disposition of the vehicle or trailer. Nothing in this subparagraph affects the application or administration of the



Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code).

(d) For purposes of this subdivision (36), all of the following apply:

(i) Additional consideration is not nominal if (A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised.

(ii) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into.

(iii) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(37) "Send," in connection with any writing or notice, means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the circumstances. The receipt of any writing or notice within the time in which it would have arrived if properly sent has the effect of a proper sending. When a writing or notice is required to be sent by registered or certified mail, proof of mailing is sufficient, and proof of receipt by the addressee is not required unless the words "with return receipt requested" are also used.

(38) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(39) "Surety" includes guarantor.

(40) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(41) "Term" means that portion of an agreement that relates to a particular matter.

(42) "Unauthorized" signature means one made without actual, implied, or apparent authority, and includes a forgery.

(43) "Value." Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3303, 4210, and 4211), a person gives "value" for rights if he or she acquires them in any of the following ways:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a chargeback is provided for in the event of difficulties in collection.

(b) As security for, or in total or partial satisfaction of, a preexisting claim.

(c) By accepting delivery pursuant to a preexisting contract for purchase.

(d) Generally, in return for any consideration sufficient to support a simple contract.

(44) "Warehouse receipt" means a document evidencing the receipt of goods for storage issued by a warehouseman (Section 7102), and that, by its terms, evidences the intention of the issuer that the person entitled under the document (Section 7403(4)) has the right to receive, hold, and dispose of the document and the goods it covers. Designation of a document by the issuer as a "warehouse receipt" is conclusive evidence of that intention.

(45) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form.

SEC. 27. Section 1206 of the Commercial Code is amended to read:

1206. (1) Except in the cases described in subdivision (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his or her authorized agent.

(2) Subdivision (1) of this section does not apply to contracts for the sale of goods (Section 2201) nor of securities (Section 8113) nor to security agreements (Sections 9201 and 9203).

(3) Subdivision (1) of this section does not apply to a qualified financial contract as that term is defined in paragraph (2) of subdivision (b) of Section 1624 of the Civil Code if either (a) there is, as provided in paragraph (3) of subdivision (b) of Section 1624 of the Civil Code, sufficient evidence to indicate that a contract has been made or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of

the qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

SEC. 28. Section 2103 of the Commercial Code is amended to read:

2103. (1) In this division unless the context otherwise requires:

- (a) "Buyer" means a person who buys or contracts to buy goods.
- (b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- (c) "Receipt" of goods means taking physical possession of them.
- (d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this division or to specified chapters thereof, and the sections in which they appear are:

"Acceptance." Section 2606.  
"Banker's credit." Section 2325.  
"Between merchants." Section 2104.  
"Cancellation." Section 2106(4).  
"Commercial unit." Section 2105.  
"Confirmed credit." Section 2325.  
"Conforming to contract." Section 2106.  
"Contract for sale." Section 2106.  
"Cover." Section 2712.  
"Entrusting." Section 2403.  
"Financing agency." Section 2104.  
"Future goods." Section 2105.  
"Goods." Section 2105.  
"Identification." Section 2501.  
"Installment contract." Section 2612.  
"Letter of Credit." Section 2325.  
"Lot." Section 2105.  
"Merchant." Section 2104.  
"Overseas." Section 2323.  
"Person in position of seller." Section 2707.  
"Present sale." Section 2106.  
"Sale." Section 2106.  
"Sale on approval." Section 2326.  
"Sale or return." Section 2326.  
"Termination." Section 2106.

(3) The following definitions in other divisions apply to this division:

"Check." Section 3104.  
"Consignee." Section 7102.

"Consignor." Section 7102.

"Consumer goods." Section 9102.

"Dishonor." Section 3502.

"Draft." Section 3104.

(4) In addition Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 28.1. Section 2210 of the Commercial Code is amended to read:

2210. (1) A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in Section 9406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him or her by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subdivision (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (A) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (B) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of "the contract" or of "all my rights under the

contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him or her to perform those duties.

This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his or her rights against the assignor demand assurances from the assignee (Section 2609).

SEC. 28.2. Section 2326 of the Commercial Code is amended to read:

2326. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) A "sale on approval" if the goods are delivered primarily for use, and

(b) A "sale or return" if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this division (Section 2201) and as contradicting the sale aspect of the contract within the provisions of this division on parol or extrinsic evidence (Section 2202).

(4) If a person delivers or consigns for sale goods which the person used or bought for use for personal, family, or household purposes, these goods do not become the property of the deliverer or consignee unless the deliverer or consignee purchases and fully pays for the goods. Nothing in this subdivision shall prevent the deliverer or consignee from acting as the deliverer's agent to transfer title to these goods to a buyer who pays the full purchase price. Any payment received by the deliverer or consignee from a buyer of these goods, less any amount which the deliverer expressly agreed could be deducted from the payment for commissions, fees, or expenses, is the property of the deliverer and shall not be subject to the claims of the deliverer's or consignee's creditors.

SEC. 28.3. Section 2502 of the Commercial Code is amended to read:

2502. (1) Subject to subdivisions (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of

the price of goods in which he or she has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if either:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract.

(b) In all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under paragraph (a) of subdivision (1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his or her special property has been made by the buyer he or she acquires the right to recover the goods only if they conform to the contract for sale.

SEC. 28.4. Section 2716 of the Commercial Code is amended to read:

2716. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he or she is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

SEC. 29. Section 4210 of the Commercial Code is amended to read:

4210. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied.

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of chargeback.

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this

section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Division 9 (commencing with Section 9101), but all of the following are applicable:

(1) No security agreement is necessary to make the security interest enforceable (subparagraph (A) of paragraph (3) of subdivision (b) of Section 9203).

(2) No filing is required to perfect the security interest.

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

SEC. 29.5. Section 5118 is added to the Commercial Code, to read:

5118. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subdivision (a), the security interest continues and is subject to Division 9 (commencing with Section 9101), subject to all of the following:

(1) A security agreement is not necessary to make the security interest enforceable under paragraph (3) of subdivision (b) of section 9203.

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected.

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

SEC. 30. Section 6102 of the Commercial Code is amended to read:

6102. (a) In this division, unless the context otherwise requires:

(1) "Assets" means the inventory and equipment that is the subject of a bulk sale and any tangible and intangible personal property

used or held for use primarily in, or arising from, the seller's business and sold in connection with that inventory and equipment, but the term does not include any of the following:

(i) Fixtures (paragraph (41) of subdivision (a) of Section 9102) other than readily removable factory and office machines.

(ii) The lessee's interest in a lease of real property.

(iii) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

(2) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.

(3) "Bulk sale" means either of the following:

(i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory and equipment, as measured by a value on the date of the bulk-sale agreement.

(ii) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory and equipment, as measured by value on the date of the bulk-sale agreement.

(4) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of this state permit the holder of the claim to recover them in an action against the obligor.

(5) "Claimant" means a person holding a claim incurred in the seller's business other than any of the following:

(i) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay.

(ii) A claim for injury to an individual or to property, or for breach of warranty, unless all of the following are satisfied:

(A) A right of action for the claim has accrued.

(B) The claim has been asserted against the seller.

(C) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it.

(iii) A claim for taxes owing to a governmental unit, if both of the following are satisfied:

(A) A statute governing the enforcement of the claim permits or requires notice of the bulk sale to be given to the governmental unit in a manner other than by compliance with the requirements of this division.

(B) Notice is given in accordance with the statute.



(6) "Creditor" means a claimant or other person holding a claim.

(7) (i) "Date of the bulk sale" means either of the following:

(A) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10 percent of the net proceeds is paid to or for the benefit of the seller.

(B) In all other cases, the later of the date on which either of the following occurs:

(I) More than 10 percent of the net contract price is paid to or for the benefit of the seller.

(II) More than 10 percent of the assets, as measured by value, are transferred to the buyer.

(ii) For purposes of this subdivision the following shall apply:

(A) Delivery of a negotiable instrument (subdivision (1) of Section 3104) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto.

(B) To the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier.

(C) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.

(8) "Date of the bulk-sale agreement" means either of the following:

(i) In the case of a sale by auction or conducted by a liquidator (subparagraph (i) of paragraph (3)), the date on which the seller engages the auctioneer or liquidator.

(ii) In all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.

(9) "Debt" means liability on a claim.

(10) "Liquidator" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(11) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less each of the following:

(i) The amount of any proceeds of the sale of an asset, to the

extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset.

(ii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(12) "Net proceeds" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less each of the following:

(i) Commissions and reasonable expenses of the sale.

(ii) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset.

(iii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(13) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(14) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(15) "Value" means fair market value.

(16) "Verified" means signed and sworn to or affirmed.

(b) The following definitions in other divisions apply to this division:

(1) "Buyer." Paragraph (a) of subdivision (1) of Section 2103.

(2) "Equipment." Paragraph (33) of subdivision (a) of Section 9102.

(3) "Inventory." Paragraph (48) of subdivision (a) of Section 9102.

(4) "Sale." Subdivision (1) of Section 2106.

(5) "Seller." Paragraph (d) of subdivision (1) of Section 2103.

(c) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 31. Section 6103 of the Commercial Code is amended to read:

6103. (a) Except as otherwise provided in subdivision (c), this division applies to a bulk sale if both of the following are satisfied:

(1) The seller's principal business is the sale of inventory from stock, including those who manufacture what they sell, or that of a restaurant owner.

(2) On the date of the bulk-sale agreement the seller is located in this state or, if the seller is located in a jurisdiction that is not a part of the United States, the seller's major executive office in the United States is in this state.

(b) A seller is deemed to be located at its place of business. If a seller has more than one place of business, the seller is deemed located at its chief executive office.

(c) This division does not apply to any of the following:

(1) A transfer made to secure payment or performance of an obligation.

(2) A transfer of collateral to a secured party pursuant to Section 9609.

(3) A disposition of collateral pursuant to Section 9610.

(4) Retention of collateral pursuant to Section 9620.

(5) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero.

(6) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee.

(7) A sale by an executor, administrator, receiver, trustee in bankruptcy, debtor in possession, or any public officer under judicial process.

(8) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization.

(9) A sale to a buyer whose principal place of business is in the United States and who satisfies each of the following:

(i) Not earlier than 21 days before the date of the bulk sale, (A) obtains from the seller a verified and dated list of claimants of

whom the seller has notice three days before the seller sends or delivers the list to the buyer or (B) conducts a reasonable inquiry to discover the claimants.

(ii) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be.

(iii) Is not insolvent after the assumption.

(iv) Records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided in Section 6105.

(10) A sale to a buyer whose principal place of business is in the United States and who satisfies each of the following:

(i) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale.

(ii) Is not insolvent after the assumption.

(iii) Records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided by Section 6105.

(11) A sale to a new organization that is organized to take over and continue the business of the seller and that has its principal place of business in the United States if each of the following conditions are satisfied:

(i) The buyer assumes in full the debts that were incurred in the seller's business before the date of the bulk sale.

(ii) The seller receives nothing from the sale except an interest in the new organization that is subordinate to the claims against the organization arising from the assumption.

(iii) The buyer records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided in Section 6105.

(12) A sale of assets having either of the following:

(i) A value, net of liens and security interests, of less than ten thousand dollars (\$10,000). If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(ii) A value of more than five million dollars (\$5,000,000) on the date of the bulk-sale agreement.

(13) A sale required by, and made pursuant to, statute.

(14) A transfer of personal property, if the personal property is

leased back to the transferor immediately following the transfer and either there has been compliance with subdivision (h) of Section 3440.1 of the Civil Code or the transfer is exempt under subdivision (k) of Section 3440.1 of the Civil Code.

(15) A transfer which is subject to and complies with Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, if the transferee records and publishes notice of the transfer at least 12 business days before the transfer is to be consummated in the manner provided in Section 6105 and the notice contains the information set forth in paragraphs (1) to (4) inclusive, of subdivision (a) of Section 6105.

(16) A transfer of goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman (Section 7102) and a copy of the receipt is kept at the principal place of business of the warehouseman and at the warehouse in which the goods are stored.

(d) The notice under subparagraph (iv) of paragraph (9) of subdivision (c) shall state each of the following:

(1) That a sale that may constitute a bulk sale has been or will be made.

(2) The date or prospective date of the bulk sale.

(3) The individual, partnership, or corporate names and the addresses of the seller and buyer.

(4) The address to which inquiries about the sale may be made, if different from the seller's address.

(5) That the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

(e) The notice under subparagraph (iii) of paragraph (10) of subdivision (c) and subparagraph (iii) of paragraph (11) of subdivision (c) shall state each of the following:

(1) That a sale that may constitute a bulk sale has been or will be made.

(2) The date or prospective date of the bulk sale.

(3) The individual, partnership, or corporate names and the addresses of the seller and buyer.

(4) The address to which inquiries about the sale may be made, if different from the seller's address.

(5) That the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

(f) For purposes of paragraph (12) of subdivision (c), the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets

is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation.

SEC. 32. Section 7503 of the Commercial Code is amended to read:

7503. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) Delivered nor entrusted them nor any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this division (Section 7403) or with power of disposition under this code (Sections 2403 and 9320) or other statute or rule of law, nor

(b) Acquiesced in the procurement by the bailor or his or her nominee of any document of title.

(2) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Chapter 4 of this division pursuant to its own bill of lading discharges the carrier's obligation to deliver.

SEC. 33. Section 8103 of the Commercial Code is amended to read:

8103. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this division, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this division and not by Division 3 (commencing with Section 3101), even though it also meets the requirements of that division. However, a negotiable instrument governed by Division 3 (commencing with Section 3101) is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in paragraph (15) of subdivision (a) of Section 9102, is not a security or a financial asset.

SEC. 33.1. Section 8106 of the Commercial Code is amended to read:

8106. (a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and either of the following applies:

(1) The certificate is endorsed to the purchaser or in blank by an effective endorsement.

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if either of the following applies:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if any of the following apply:

(1) The purchaser becomes the entitlement holder.

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subdivision (c) or (d) has control, even if the registered owner in the case of subdivision (c) or the entitlement holder in the case of subdivision (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or

otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in paragraph (2) of subdivision (c) or paragraph (2) of subdivision (d) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

SEC. 33.2. Section 8110 of the Commercial Code is amended to read:

8110. (a) The local law of the issuer's jurisdiction, as specified in subdivision (d), governs the following:

- (1) The validity of a security.
- (2) The rights and duties of the issuer with respect to registration of transfer.
- (3) The effectiveness of registration of transfer by the issuer.
- (4) Whether the issuer owes any duties to an adverse claimant to a security.
- (5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subdivision (e), governs the following:

- (1) Acquisition of a security entitlement from the securities intermediary.
- (2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement.
- (3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement.
- (4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.
- (c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of



that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in paragraphs (2) to (5), inclusive, of subdivision (a).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the security intermediary's jurisdiction for purposes of this code, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

SEC. 33.3. Section 8301 of the Commercial Code is amended to read:

8301. (a) Delivery of a certificated security to a purchaser occurs when any of the following occur:

(1) The purchaser acquires possession of the security certificate.

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the

certificate, acknowledges that it holds for the purchaser.

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (A) registered in the name of the purchaser, (B) payable to the order of the purchaser, or (C) specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when any of the following occur:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer.

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

SEC. 33.4. Section 8302 of the Commercial Code is amended to read:

8302. (a) Except as otherwise provided in subdivisions (b) and (c), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

SEC. 33.41. Section 8510 of the Commercial Code is amended to read:

8510. (a) In a case not covered by the priority rules in Division 9 (commencing with Section 9101) or the rules stated in subdivision (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Division 9 (commencing with Section 9101), a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority

over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subdivision (d), purchasers who have control rank according to priority in time of any of the following:

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under paragraph (1) of subdivision (d) of Section 8106.

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under paragraph (2) of subdivision (d) of Section 8106.

(3) If the purchaser obtained control through another person under paragraph (3) of subdivision (d) of Section 8106, the time on which priority would be based under this subdivision if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

SEC. 33.5. Section 8603 of the Commercial Code is amended to read:

8603. (a) This division does not affect an action or proceeding commenced before this division becomes operative.

(b) If a security interest in a security is perfected at the date this division becomes operative, and the action by which the security interest was perfected would suffice to perfect a security interest under this division, no further action is required to continue perfection. If a security interest in a security is perfected at the date this division takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this division, the security interest remains perfected for a period of four months after the operative date and continues perfected thereafter if appropriate action to perfect under this division is taken within that period. If a security interest is perfected at the date this division becomes operative and the security interest can be perfected by filing under Division 9 (commencing with Section 9101), a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect and that financing statement shall contain a statement that it is being filed pursuant to this section.

SEC. 34. Division 9 (commencing with Section 9101) of the Commercial Code is repealed.

SEC. 35. Division 9 (commencing with Section 9101) is added to the Commercial Code, to read:

DIVISION 9. SECURED TRANSACTIONS  
CHAPTER 1. GENERAL PROVISIONS

9101. This division may be cited as the Uniform Commercial Code-Secured Transactions.

9102. (a) In this division:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record that is all of the following:

(A) Authenticated by a secured party.

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record.

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products that meets all of the following conditions:

(A) It secures payment or performance of an obligation for either of the following:

(i) Goods or services furnished in connection with a debtor's farming operation.

(ii) Rent on real property leased by a debtor in connection with its farming operation.

(B) It is created by statute in favor of a person that does either of the following:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation.

(ii) Leased real property to a debtor in connection with the debtor's farming operation.

(C) Its effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means either of the following:

(A) Oil, gas, or other minerals that are subject to a security interest that does both of the following:

(i) Is created by a debtor having an interest in the minerals before extraction.

(ii) Attaches to the minerals as extracted.

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means to do either of the following:

(A) To sign.

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both

a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes all of the following:

(A) Proceeds to which a security interest attaches.

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which either of the following conditions is satisfied:

(A) The claimant is an organization.

(B) The claimant is an individual and both of the following conditions are satisfied regarding the claim:

(i) It arose in the course of the claimant's business or profession.

(ii) It does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is either of the following:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws.

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that is either of the

following:

(A) Is registered as a futures commission merchant under federal commodities law.

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means to do either of the following:

(A) To send a written or other tangible record.

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record.

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and all of the following conditions are satisfied:

(A) The merchant satisfies all of the following conditions:

(i) He or she deals in goods of that kind under a name other than the name of the person making delivery.

(ii) He or she is not an auctioneer.

(iii) He or she is not generally known by its creditors to be substantially engaged in selling the goods of others.

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery.

(C) The goods are not consumer goods immediately before delivery.

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which both of the following conditions are satisfied:

(A) An individual incurs an obligation primarily for personal, family, or household purposes.

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into

primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means any of the following:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor.

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in subdivision (2) of Section 7201.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are any of the following:

(A) Crops grown, growing, or to be grown, including both of the following:

(i) Crops produced on trees, vines, and bushes.

(ii) Aquatic goods produced in aquacultural operations.

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations.

(C) Supplies used or produced in a farming operation.



(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subdivision (a) of Section 9519.

(37) "Filing office" means an office designated in Section 9501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 9526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subdivisions (a) and (b) of Section 9502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium with which the program is embedded. The term also does not include

accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

(47)

"Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which are any of the following:

(A) Leased by a person as lessor.

(B) Held by a person for sale or lease or to be furnished under a contract of service.

(C) Furnished by a person under a contract of service.

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) (A) "Lien creditor" means any of the following:

(i) A creditor that has acquired a lien on the property involved by attachment, levy, or the like.

(ii) An assignee for benefit of creditors from the time of assignment.

(iii) A trustee in bankruptcy from the date of the filing of the petition.

(iv) A receiver in equity from the time of appointment.

(B) "Lien creditor" does not include a creditor who by filing a notice with the Secretary of State has acquired only an attachment or judgment lien on personal property, or both.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body-feet or more in width or 40 body-feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured home transaction" means a secured transaction that satisfies either of the following:

(A) It creates a purchase money security interest in a manufactured home, other than a manufactured home held as inventory.

(B) It is a secured transaction in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under subdivision (d) of Section 9203 by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation,

(ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subdivision (d) of Section 9203.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means any of the following:

(A) The spouse of the individual.

(B) A brother, brother-in-law, sister, or sister-in-law of the individual.

(C) An ancestor or lineal descendant of the individual or the individual's spouse.

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means any of the following:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization.

(B) An officer or director of, or a person performing similar functions with respect to, the organization.

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A).

(D) The spouse of an individual described in subparagraph (A), (B), or (C).

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds" means any of the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral.

(B) Whatever is collected on, or distributed on account of, collateral.

(C) Rights arising out of collateral.

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral.

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by

reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9620, 9621, and 9622.

(67) "Public finance transaction" means a secured transaction in connection with which all of the following conditions are satisfied:

(A) Debt securities are issued.

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years.

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(71) "Secondary obligor" means an obligor to the extent that either of the following conditions are satisfied:

(A) The obligor's obligation is secondary.

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(72) "Secured party" means any of the following:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding.

(B) A person that holds an agricultural lien.

(C) A consignor.

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for.

(F) A person that holds a security interest arising under Section 2401, 2505, 4210, or 5118, or under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

(73) "Security agreement" means an agreement that creates or provides for a security interest.

(74) "Send," in connection with a record or notification, means to do either of the following:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances.

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement that does both of the following:

(A) Identifies, by its file number, the initial financing statement to which it relates.

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of any of the following:

(A) Operating a railroad, subway, street railway, or trolley bus.

(B) Transmitting communications electrically, electromagnetically, or by light.

(C) Transmitting goods by pipeline or sewer.

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other divisions apply to this division:

"Applicant"	Section 5102.
"Beneficiary"	Section 5102.
"Broker"	Section 8102.
"Certificated security"	Section 8102.
"Check"	Section 3104.
"Clearing corporation"	Section 8102.
"Contract for sale"	Section 2106.
"Customer"	Section 4104.
"Entitlement holder"	Section 8102.
"Financial asset"	Section 8102.
"Holder in due course"	Section 3302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5102.
"Issuer" (with respect to a security)	Section 8201.
"Lease"	Section 10103.
"Lease agreement"	Section 10103.
"Lease contract"	Section 10103.
"Leasehold interest"	Section 10103.
"Lessee"	Section 10103.
"Lessee in ordinary course of business"	Section 10103.
"Lessor"	Section 10103.
"Lessor's residual interest"	Section 10103.
"Letter of credit"	Section 5102.
"Merchant"	Section 2104.
"Negotiable instrument"	Section 3104.
"Nominated person"	Section 5102.

"Note"	Section 3104.
"Proceeds of a letter of credit"	Section 5114.
"Prove"	Section 3103.
"Sale"	Section 2106.
"Securities account"	Section 8501.
"Securities intermediary"	Section 8102.
"Security"	Section 8102.
"Security certificate"	Section 8102.
"Security entitlement"	Section 8102.
"Uncertificated security"	Section 8102.

(c) Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

9103. (a) In this section:

(1) "Purchase money collateral" means goods or software that secures a purchase money obligation incurred with respect to that collateral.

(2) "Purchase money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase money security interest as follows:

(1) To the extent that the goods are purchase money collateral with respect to that security interest.

(2) If the security interest is in inventory that is or was purchase money collateral, also to the extent that the security interest secures a purchase money obligation incurred with respect to other inventory in which the secured party holds or held a purchase money security interest.

(3) Also to the extent that the security interest secures a purchase money obligation incurred with respect to software in which the secured party holds or held a purchase money security interest.

(c) A security interest in software is a purchase money security interest to the extent that the security interest also secures a purchase money obligation incurred with respect to goods in which the secured party holds or held a purchase money security interest if both of the following conditions are satisfied:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods.

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.



(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase money security interest depends on the application of a payment to a particular obligation, the payment must be applied as follows:

(1) In accordance with any reasonable method of application to which the parties agree.

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment.

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured.

(B) If more than one obligation is secured, to obligations secured by purchase money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase money security interest does not lose its status as such, even if any of the following conditions are satisfied:

(1) The purchase money collateral also secures an obligation that is not a purchase money obligation.

(2) Collateral that is not purchase money collateral also secures the purchase money obligation.

(3) The purchase money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase money security interest has the burden of establishing the extent to which the security interest is a purchase money security interest.

(h) The limitation of the rules in subdivisions (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

9104. (a) A secured party has control of a deposit account if any of the following conditions is satisfied:

(1) The secured party is the bank with which the deposit account is maintained.

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions

originated by the secured party directing disposition of the funds in the account without further consent by the debtor.

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subdivision (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

9105. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that each of the following conditions is satisfied:

(1) A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable.

(2) The authoritative copy identifies the secured party as the assignee of the record or records.

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian.

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party.

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy.

(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

9106. (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8106.

(b) A secured party has control of a commodity contract if either of the following conditions is satisfied:

(1) The secured party is the commodity intermediary with which the commodity contract is carried.

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

9107. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented

to an assignment of proceeds of the letter of credit under subdivision (c) of Section 5114 or otherwise applicable law or practice.

9108. (a) Except as otherwise provided in subdivisions (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subdivision (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by any of the following:

(1) Specific listing.

(2) Category.

(3) Except as otherwise provided in subdivision (e), a type of collateral defined in this code.

(4) Quantity.

(5) Computational or allocational formula or procedure.

(6) Except as otherwise provided in subdivision (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subdivision (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes either of the following:

(1) The collateral by those terms or as investment property.

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in this code is an insufficient description of either of the following:

(1) A commercial tort claim.

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

(f) A description of investment property collateral also shall meet the applicable requirements of Section 1799.103 of the Civil Code. A description of consumer goods also shall meet the applicable requirements of Section 1799.100 of the Civil Code.

9109. (a) Except as otherwise provided in subdivisions (c) and (d), this division applies to each of the following:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(2) An agricultural lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(4) A consignment.

(5) A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (5) of Section 10508, as provided in Section 9110.

(6) A security interest arising under Section 4210 or 5118.

(b) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(c) This division does not apply to the extent that any of the following conditions is satisfied:

(1) A statute, regulation, or treaty of the United States preempts this division.

(2) Another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state. These statutes include statutes that provide for pledges, liens, or security interests to secure bonds or other obligations (including, without limitation, leases) of this state or a governmental unit, whether the statute is of general application like Sections 5450 and 5451 of the Government Code, or is specific to particular types of obligations of this state or of governmental units or to particular governmental units.

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit.

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114.

(d) This division does not apply to any of the following:

(1) A landlord's lien, other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary, or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness.

(8) Any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract.

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral.

(10) A right of recoupment or setoff, provided that both of the following sections apply:

(A) Section 9340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts.

(B) Section 9404 applies with respect to defenses or claims of an account debtor.

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for each of the following:

(A) Liens on real property in Sections 9203 and 9308.

(B) Fixtures in Section 9334.

(C) Fixture filings in Sections 9501, 9502, 9512, 9516, and 9519.

(D) Security agreements covering personal and real property in Section 9604.

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(13) An assignment of a deposit account in a consumer transaction, but Sections 9315 and 9322 apply with respect to proceeds and priorities in proceeds.

(14) Any security interest created by the assignment of the benefits of any public construction contract under the Improvement Act of 1911 (Division 7 (commencing with Section 5000), Streets and Highways Code).

(15) Transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

9110. A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (e) of Section 10508 is subject to this division. However, until the debtor obtains possession of the goods, all of the following apply:

(1) The security interest is enforceable, even if paragraph (3) of subdivision (b) of Section 9203 has not been satisfied.

(2) Filing is not required to perfect the security interest.

(3) The rights of the secured party after default by the debtor are governed by Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101).

(4) The security interest has priority over a conflicting security interest created by the debtor.

CHAPTER 2. EFFECTIVENESS OF SECURITY AGREEMENT: ATTACHMENT OF SECURITY INTEREST: RIGHTS OF PARTIES TO SECURITY AGREEMENT

9201. (a) Except as otherwise provided in this code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this division is subject to any applicable rule of law which establishes a different rule for consumers; to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code; Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code; the Retail Installment Sales Act, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code; the Automobile Sales Finance Act, Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code; Part 4 (commencing with Section 1738) of Division 3 of the Civil Code, with respect to the applicable provisions of Titles 1 (commencing with Section 1738), 1.3 (commencing with Section 1747), 1.3A (commencing with Section 1748.10), 1.3B (commencing with Section 1748.20), 1.4 (commencing with Section 1749), 1.5 (commencing with Section 1750), 1.6 (commencing with Section 1785.1), 1.61 (commencing with Section 1785.41), 1.6A (commencing with Section 1786), 1.6B (commencing with Section 1787.1), 1.6C (commencing with Section 1788), 1.6D (commencing with Section 1789), 1.6E (commencing with Section 1789.10), 1.6F (commencing with Section 1789.30), 1.7 (commencing with Section 1790), 1.8 (commencing with Section 1798), 1.83 (commencing with Section 1799.5), 1.84 (commencing with Section 1799.8), 1.85 (commencing with Section 1799.90), 1.86 (commencing with Section 1799.200), 2 (commencing with Section 1801), 2.4 (commencing with Section 1812.50), 2.5 (commencing with Section 1812.80), 2.6 (commencing with Section 1812.100), 2.7 (commencing with Section 1812.200), 2.8 (commencing with Section 1812.300), 2.9 (commencing with Section 1812.400), 2.95 (commencing with Section 1812.600), 2.96 (commencing with Section 1812.620), 3 (commencing with Section 1813), 4 (commencing with Section 1884), and 14 (commencing with Section 2872); the Industrial Loan Law, Division 7

(commencing with Section 18000) of the Financial Code; the Pawnbroker Law, Division 8 (commencing with Section 21000) of the Financial Code; the California Finance Lenders Law, Division 9 (commencing with Section 22000) of the Financial Code; and the Mobilehomes-Manufactured Housing Act of 1980, Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code; and to any applicable consumer protection statute, regulation, or law.

(c) In case of conflict between this division and a rule of law, statute, or regulation described in subdivision (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subdivision (b) has only the effect the statute or regulation specifies.

(d) This division does not do either of the following:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subdivision (b).

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

9202. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

9203. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subdivisions (c) to (i), inclusive, a security interest is enforceable against the debtor and third parties with respect to the collateral only if each of the following conditions is satisfied:

(1) Value has been given.

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party.

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned.

(B) The collateral is not a certificated security and is in the possession of the secured party under Section 9313 pursuant to the debtor's security agreement.

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party

under Section 8301 pursuant to the debtor's security agreement.

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 9104, 9105, 9106, or 9107 pursuant to the debtor's security agreement.

(c) Subdivision (b) is subject to Section 4210 on the security interest of a collecting bank, Section 5118 on the security interest of a letter-of-credit issuer or nominated person, Section 9110 on a security interest arising under Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101), and Section 9206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this division or by contract, either of the following conditions is satisfied:

(1) The security agreement becomes effective to create a security interest in the person's property.

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person both of the following apply:

(1) The agreement satisfies paragraph (3) of subdivision (b) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement.

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

9204. (a) Except as otherwise provided in subdivision (b), a



security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to either of the following:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value.

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

9205. (a) A security interest is not invalid or fraudulent against creditors solely because either of the following conditions is satisfied:

(1) The debtor has the right or ability to do any of the following:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods.

(B) Collect, compromise, enforce, or otherwise deal with collateral.

(C) Accept the return of collateral or make repossessions.

(D) Use, commingle, or dispose of proceeds.

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

9206. (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if both of the following conditions are satisfied:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase.

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subdivision (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if both of

the following conditions are satisfied:

(1) The security or other financial asset satisfies both of the following:

(A) In the ordinary course of business it is transferred by delivery with any necessary endorsement or assignment.

(B) It is delivered under an agreement between persons in the business of dealing with those securities or financial assets.

(2) The agreement calls for delivery against payment.

(d) The security interest described in subdivision (c) secures the obligation to make payment for the delivery.

9207. (a) Except as otherwise provided in subdivision (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subdivision (d), if a secured party has possession of collateral all of the following apply:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral.

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage.

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled.

(4) The secured party may use or operate the collateral for any of the following purposes:

(A) For the purpose of preserving the collateral or its value.

(B) As permitted by an order of a court having competent jurisdiction.

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subdivision (d), a secured party having possession of collateral or control of collateral under Section 9104, 9105, 9106, or 9107 may or shall, as the case may be, do all of the following:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral.

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor.

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor both of the

following apply:

(1) Subdivision (a) does not apply unless the secured party is entitled under an agreement to either of the following:

(A) To charge back uncollected collateral.

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

(2) Subdivisions (b) and (c) do not apply.

9208. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor all of the following apply:

(1) A secured party having control of a deposit account under paragraph (2) of subdivision (a) of Section 9104 shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party.

(2) A secured party having control of a deposit account under paragraph (3) of subdivision (a) of Section 9104 shall do either of the following:

(A) Pay the debtor the balance on deposit in the deposit account.

(B) Transfer the balance on deposit into a deposit account in the debtor's name.

(3) A secured party, other than a buyer, having control of electronic chattel paper under Section 9105 shall do all of the following:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian.

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

(4) A secured party having control of investment property under paragraph (2) of subdivision (d) of Section 8106 or under subdivision (b) of Section 9106 shall send to the securities intermediary or

commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party.

(5) A secured party having control of a letter-of-credit right under Section 9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

9209. (a) Except as otherwise provided in subdivision (c), this section applies if both of the following conditions are satisfied:

(1) There is no outstanding secured obligation.

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under subdivision (a) of Section 9406 an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

9210. (a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subdivisions (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment

intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt as follows:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting.

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that satisfies both of the following conditions:

(1) It disclaims any interest in the collateral.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record that satisfies both of the following conditions:

(1) It disclaims any interest in the obligations.

(2) If known to the recipient, it provides the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

### CHAPTER 3. PERFECTION AND PRIORITY

9301. Except as otherwise provided in Sections 9303 to 9306, inclusive, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs all of the following:

(A) Perfection of a security interest in the goods by filing a fixture filing.

(B) Perfection of a security interest in timber to be cut.

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

9302. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

9303. (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

9304. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the

priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this chapter:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this chapter, this division, or this code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

9305. (a) Except as otherwise provided in subdivision (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in subdivision (d) of Section 8110 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in subdivision (e) of Section 8110 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this chapter:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this chapter, this division, or this code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs all of the following:

(1) Perfection of a security interest in investment property by filing.

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary.

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

9306. (a) Subject to subdivision (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this chapter, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5116.

(c) This section does not apply to a security interest that is perfected only under subdivision (d) of Section 9308.

9307. (a) In this section, "place of business" means a place



where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subdivision (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subdivision (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subdivisions (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subdivision (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located in either of the following jurisdictions:

(1) In the state that the law of the United States designates, if the law designates a state of location.

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location.

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subdivision (e) or (f) notwithstanding either of the following:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization.

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this chapter.

9308. (a) Except as otherwise provided in this section and in Section 9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9310 to 9316, inclusive, have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this division and is later perfected by another method under this division, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

9309. The following security interests are perfected when they attach:

(1) A purchase money security interest in consumer goods, except as otherwise provided in subdivision (b) of Section 9311 with respect to consumer goods that are subject to a statute or treaty described in subdivision (a) of Section 9311.

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same

assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles.

(3) A sale of a payment intangible.

(4) A sale of a promissory note.

(5) A security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services.

(6) A security interest arising under Section 2401 or 2505, under subdivision (3) of Section 2711, or under subdivision (5) of Section 10508, until the debtor obtains possession of the collateral.

(7) A security interest of a collecting bank arising under Section 4210.

(8) A security interest of an issuer or nominated person arising under Section 5118.

(9) A security interest arising in the delivery of a financial asset under subdivision (c) of Section 9206.

(10) A security interest in investment property created by a broker or securities intermediary.

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary.

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder.

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

9310. (a) Except as otherwise provided in subdivision (b) and in subdivision (b) of Section 9312, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest that satisfies any of the following conditions:

(1) It is perfected under subdivision (d), (e), (f), or (g) of Section 9308.

(2) It is perfected under Section 9309 when it attaches.

(3) It is a security interest in property subject to a statute, regulation, or treaty described in subdivision (a) of Section 9311.

(4) It is a security interest in goods in possession of a bailee which is perfected under paragraph (1) or (2) of subdivision (d) of Section 9312.

(5) It is a security interest in certificated securities, documents, goods, or instruments which is perfected without filing or possession under subdivision (e), (f), or (g) of Section 9312.

(6) It is a security interest in collateral in the secured party's possession under Section 9313.

(7) It is a security interest in a certificated security which is

perfected by delivery of the security certificate to the secured party under Section 9313.

(8) It is a security interest in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 9314.

(9) It is a security interest in proceeds which is perfected under Section 9315.

(10) It is perfected under Section 9316.

(11) It is a security interest in, or claim in or under, any policy of insurance including unearned premiums which is perfected by written notice to the insurer under paragraph (4) of subdivision (b) of Section 9312.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this division is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

9311. (a) Except as otherwise provided in subdivision (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to any of the following:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subdivision (a) of Section 9310.

(2) (A) The provisions of the Vehicle Code which require registration of a vehicle or boat.

(B) The provisions of the Health and Safety Code which require registration of a mobilehome or commercial coach, except that during any period in which collateral is inventory, the filing provisions of Chapter 5 (commencing with Section 9501) apply to a security interest in that collateral.

(C) The provisions of the Health and Safety Code which require registration of all interests in approved air contaminant emission reductions (Sections 40709 to 40713, inclusive, of the Health and Safety Code).

(3) A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subdivision (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this division. Except as otherwise provided in

subdivision (d), in Section 9313, and in subdivisions (d) and (e) of Section 9316 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subdivision (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subdivision (d) and in subdivisions (d) and (e) of Section 9316, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subdivision (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this division.

(d) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

9312. (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in subdivisions (c) and (d) of Section 9315 for proceeds, all of the following apply:

(1) A security interest in a deposit account may be perfected only by control under Section 9314.

(2) Except as otherwise provided in subdivision (d) of Section 9308, a security interest in a letter-of-credit right may be perfected only by control under Section 9314.

(3) A security interest in money may be perfected only by the secured party's taking possession under Section 9313.

(4) A security interest in, or claim in or under, any policy of insurance, including unearned premiums, may be perfected only by giving written notice of the security interest or claim to the insurer. This paragraph does not apply to a health care insurance receivable. A security interest in a health care insurance receivable may be perfected only as otherwise provided in this division.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods both of the following apply:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document.

(2) A security interest perfected in the document has priority

over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by any of the following methods:

(1) Issuance of a document in the name of the secured party.

(2) The bailee's receipt of notification of the secured party's interest.

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of either of the following:

(1) Ultimate sale or exchange.

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of either of the following:

(1) Ultimate sale or exchange.

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subdivision (e), (f), or (g) expires, perfection depends upon compliance with this division.

9313. (a) Except as otherwise provided in subdivision (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subdivision (d) of Section 9316.

(c) With respect to collateral other than certificated securities

and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when either of the following conditions is satisfied:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit.

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit both of the following apply:

(1) The acknowledgment is effective under subdivision (c) or under subdivision (a) of Section 8301, even if the acknowledgment violates the rights of a debtor.

(2) Unless the person otherwise agrees or law other than this division otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery to do either of the following:

(1) To hold possession of the collateral for the secured party's benefit.

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subdivision (h) violates the rights of a debtor. A person to which collateral is delivered under subdivision (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or

law other than this division otherwise provides.

9314. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Section 9104, 9105, 9106, or 9107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 9104, 9105, or 9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 9106 from the time the secured party obtains control and remains perfected by control until both of the following conditions are satisfied:

(1) The secured party does not have control.

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate.

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner.

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

9315. (a) Except as otherwise provided in this division and in subdivision (2) of Section 2403, both of the following apply:

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien.

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds as follows:

(1) If the proceeds are goods, to the extent provided by Section 9336.

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this division with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds



unless any of the following conditions is satisfied:

(1) All of the following are satisfied:

(A) A filed financing statement covers the original collateral.

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed.

(C) The proceeds are not acquired with cash proceeds.

(2) The proceeds are identifiable cash proceeds.

(3) The security interest in the proceeds is perfected other than under subdivision (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under paragraph (1) of subdivision (d) becomes unperfected at the later of either of the following:

(1) When the effectiveness of the filed financing statement lapses under Section 9515 or is terminated under Section 9513.

(2) The 21st day after the security interest attaches to the proceeds.

(f) Cash proceeds retain their character as cash proceeds while in the possession of a levying officer pursuant to Title 6.5 (commencing with Section 481.010) or Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

9316. (a) A security interest perfected pursuant to the law of the jurisdiction designated in subdivision (1) of Section 9301 or in subdivision (c) of Section 9305 remains perfected until the earliest of any of the following:

(1) The time perfection would have ceased under the law of that jurisdiction.

(2) The expiration of four months after a change of the debtor's location to another jurisdiction.

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subdivision (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subdivision, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if all of the

following conditions are satisfied:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction.

(2) Thereafter the collateral is brought into another jurisdiction.

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subdivision (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subdivision (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subdivision (b) of Section 9311 or under Section 9313 are not satisfied before the earlier of either of the following:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state.

(2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of the following:

(1) The time the security interest would have become unperfected under the law of that jurisdiction.

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subdivision (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subdivision, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

9317. (a) A security interest or agricultural lien is subordinate

to the rights of both of the following:

(1) A person entitled to priority under Section 9322.

(2) A person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subdivision (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subdivision (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 9320 and 9321, if a person files a financing statement with respect to a purchase money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

9318. (a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

9319. (a) Except as otherwise provided in subdivision (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee has rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a

consignee, law other than this division determines the rights and title of a consignee while goods are in the consignee's possession if, under this chapter, a perfected security interest held by the consignor would have priority over the rights of the creditor.

9320. (a) Except as otherwise provided in subdivision (e), a buyer in ordinary course of business takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subdivision (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if all of the following conditions are satisfied:

(1) The buyer buys without knowledge of the security interest.

(2) The buyer buys for value.

(3) The buyer buys primarily for the buyer's personal, family, or household purposes.

(4) The buyer buys before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subdivision (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by subdivisions (a) and (b) of Section 9316.

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subdivisions (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 9313.

9321. (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the

lessor, even if the security interest is perfected and the lessee knows of its existence.

(d) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

9321. (a) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

(b) This section shall become operative on January 1, 2004.

9322. (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of paragraph (1) of subdivision (a), the following rules apply:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds.

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subdivision (f), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 9327, 9328, 9329, 9330, or 9331 also has priority over a conflicting security interest in both of the following:

(1) Any supporting obligation for the collateral.

(2) Proceeds of the collateral if all of the following conditions are satisfied:

(A) The security interest in proceeds is perfected.

(B) The proceeds are cash proceeds or of the same type as the collateral.

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subdivision (e) and except as otherwise provided in subdivision (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subdivision (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subdivisions (a) to (e), inclusive, are subject to all of the following:

(1) Subdivision (g) and the other provisions of this chapter.

(2) Section 4210 with respect to a security interest of a collecting bank.

(3) Section 5118 with respect to a security interest of an issuer or nominated person.

(4) Section 9110 with respect to a security interest arising under Division 2 (commencing with Section 2101) or Division 10 (commencing with Section 10101).

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

9323. (a) Except as otherwise provided in subdivision (c), for purposes of determining the priority of a perfected security interest under paragraph (1) of subdivision (a) of Section 9322, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that satisfies both of the following conditions:

(1) It is made while the security interest is perfected only under either of the following:

(A) Under Section 9309 when it attaches.

(B) Temporarily under subdivision (e), (f), or (g) of Section 9312.

(2) It is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9309 or under subdivision (e), (f), or (g) of Section 9312.

(b) Except as otherwise provided in subdivision (c), a security

interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless either of the following conditions is satisfied:

(1) The advance is made without knowledge of the lien.

(2) The advance is made pursuant to a commitment entered into without knowledge of the lien.

(c) Subdivisions (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subdivision (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of either of the following:

(1) The time the secured party acquires knowledge of the buyer's purchase.

(2) Forty-five days after the purchase.

(e) Subdivision (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Except as otherwise provided in subdivision (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of either of the following:

(1) The time the secured party acquires knowledge of the lease.

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subdivision (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

9324. (a) Except as otherwise provided in subdivision (g), a perfected purchase money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9327, a perfected security interest in its identifiable proceeds also has priority, if the purchase money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Subject to subdivision (c) and except as otherwise provided in subdivision (g), a perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section

9330, and, except as otherwise provided in Section 9327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if all of the following conditions are satisfied:

(1) The purchase money security interest is perfected when the debtor receives possession of the inventory.

(2) The purchase money secured party sends an authenticated notification to the holder of the conflicting security interest.

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory.

(4) The notification states that the person sending the notification has or expects to acquire a purchase money security interest in inventory of the debtor and describes the inventory.

(c) Paragraphs (2) to (4), inclusive, of subdivision (b) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory as follows:

(1) If the purchase money security interest is perfected by filing, before the date of the filing.

(2) If the purchase money security interest is temporarily perfected without filing or possession under subdivision (f) of Section 9312, before the beginning of the 20-day period thereunder.

(d) Subject to subdivision (e) and except as otherwise provided in subdivision (g), a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if all of the following conditions are satisfied:

(1) The purchase money security interest is perfected when the debtor receives possession of the livestock.

(2) The purchase money secured party sends an authenticated notification to the holder of the conflicting security interest.

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock.

(4) The notification states that the person sending the notification has or expects to acquire a purchase money security interest in livestock of the debtor and describes the livestock.

(e) Paragraphs (2) to (4), inclusive, of subdivision (d) apply only if the holder of the conflicting security interest had filed a



financing statement covering the same types of livestock as follows:

(1) If the purchase money security interest is perfected by filing, before the date of the filing.

(2) If the purchase money security interest is temporarily perfected without filing or possession under subdivision (f) of Section 9312, before the beginning of the 20-day period thereunder.

(f) Except as otherwise provided in subdivision (g), a perfected purchase money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subdivision (a), (b), (d), or (f), the following rules apply:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in, or the use of, collateral.

(2) In all other cases, subdivision (a) of Section 9322 applies to the qualifying security interests.

9325. (a) Except as otherwise provided in subdivision (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if either of the following applies:

(1) The debtor acquired the collateral subject to the security interest created by the other person.

(2) The security interest created by the other person was perfected when the debtor acquired the collateral.

(3) There is no period thereafter when the security interest is unperfected.

(b) Subdivision (a) subordinates a security interest only if either of the following conditions is satisfied:

(1) The security interest otherwise would have priority solely under subdivision (a) of Section 9322 or under Section 9324.

(2) The security interest arose solely under subdivision (3) of Section 2711 or subdivision (5) of Section 10508.

9326. (a) Subject to subdivision (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 9508 in collateral in which a new debtor has or acquires rights is subordinate to a security

interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 9508.

(b) The other provisions of this chapter determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 9508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

9327. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Section 9104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subdivisions (3) and (4), security interests perfected by control under Section 9314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subdivision (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under paragraph (3) of subdivision (a) of Section 9104 has priority over a security interest held by the bank with which the deposit account is maintained.

9328. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Section 9106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subdivisions (3) and (4), conflicting security interests held by secured parties each of which has control under Section 9106 rank according to priority in time of one of the following:

(A) If the collateral is a security, obtaining control.

(B) If the collateral is a security entitlement carried in a securities account and if the secured party obtained control under paragraph (1) of subdivision (d) of Section 8106, the secured party's becoming the person for which the securities account is maintained.

(C) If the collateral is a security entitlement carried in a

securities account and if the secured party obtained control under paragraph (2) of subdivision (d) of Section 8106, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried, or to be carried, in the securities account.

(D) If the collateral is a security entitlement carried in a securities account and if the secured party obtained control through another person under paragraph (3) of subdivision (d) of Section 8106, the time on which priority would be based under this paragraph if the other person were the secured party.

(E) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in paragraph (2) of subdivision (b) of Section 9106 with respect to commodity contracts carried, or to be carried, with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under subdivision (a) of Section 9313 and not by control under Section 9314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 9106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by Sections 9322 and 9323.

9329. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under Section 9107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 9314 rank according to priority in time of obtaining control.

9330. (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as

proceeds of inventory subject to a security interest if both of the following conditions are satisfied:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9105.

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in Section 9327, a purchaser having priority in chattel paper under subdivision (a) or (b) also has priority in proceeds of the chattel paper to the extent that either of the following applies:

(1) Section 9322 provides for priority in the proceeds.

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in subdivision (a) of Section 9331, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subdivisions (a) and (b), the holder of a purchase money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subdivisions (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

9331. (a) This division does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Division 3 (commencing with Section 3101), Division 7 (commencing

with Section 7101), and Division 8 (commencing with Section 8101).

(b) This division does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under Division 8 (commencing with Section 8101).

(c) Filing under this division does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subdivisions (a) and (b).

9332. (a) A

transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

9333. (a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien which satisfies all of the following conditions:

(1) It secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business.

(2) It is created by statute or rule of law in favor of the person.

(3) Its effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

9334. (a) A security interest under this division may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this division in ordinary building materials incorporated into an improvement on land.

(b) This division does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subdivisions (d) to (h), inclusive, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subdivision (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real

property and all of the following conditions are satisfied:

- (1) The security interest is a purchase money security interest.
- (2) The interest of the encumbrancer or owner arises before the goods become fixtures.
- (3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.
- (e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if any of the following conditions is satisfied:
  - (1) The debtor has an interest of record in the real property or is in possession of the real property and both of the following conditions are satisfied:
    - (A) The security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record.
    - (B) The security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner.
  - (2) The fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances that are consumer goods.
  - (3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this division.
  - (4) The security interest is both of the following:
    - (A) Created in a manufactured home in a manufactured home transaction.
    - (B) Perfected pursuant to a statute described in paragraph (2) of subdivision (a) of Section 9311.
- (f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if either of the following conditions is satisfied:
  - (1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures.
  - (2) The debtor has a right to remove the goods as against the encumbrancer or owner.
- (g) The priority of the security interest under paragraph (2) of subdivision (f) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.
- (h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in

subdivisions (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in, or is in possession of, the real property.

9335. (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subdivision (d), the other provisions of this chapter determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate of title statute under subdivision (b) of Section 9311.

(e) After default, subject to Chapter 6 (commencing with subdivision 9601), a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subdivision (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

9336. (a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest

attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subdivision (c) is perfected.

(e) Except as otherwise provided in subdivision (f), the other provisions of this chapter determine the priority of a security interest that attaches to the product or mass under subdivision (c).

(f) If more than one security interest attaches to the product or mass under subdivision (c), the following rules determine priority:

(1) A security interest that is perfected under subdivision (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subdivision (d), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

9337. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate both of the following apply:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under subdivision (b) of Section 9311, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

9338. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in paragraph (5) of subdivision (b) of Section 9516 which is incorrect at the time the financing statement is filed both of the following apply:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information.

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information,



the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

9339. This division does not preclude subordination by agreement by a person entitled to priority.

9340. (a) Except as otherwise provided in subdivision (c), a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subdivision (c), the application of this division to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under paragraph (3) of subdivision (a) of Section 9104, if the setoff is based on a claim against the debtor.

9341. Except as otherwise provided in subdivision (c) of Section 9340, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by any of the following:

(1) The creation, attachment, or perfection of a security interest in the deposit account.

(2) The bank's knowledge of the security interest.

(3) The bank's receipt of instructions from the secured party.

9342. This division does not require a bank to enter into an agreement of the kind described in paragraph (2) of subdivision (a) of Section 9104, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

#### CHAPTER 4. RIGHTS OF THIRD PARTIES

9401. (a) Except as otherwise provided in subdivision (b) and in Sections 9406, 9407, 9408, and 9409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this division.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking

effect.

9402. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

9403. (a) In this section, "value" has the meaning provided in subdivision (a) of Section 3303.

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment that satisfies all of the following conditions:

(1) It is taken for value.

(2) It is taken in good faith.

(3) It is taken without notice of a claim of a property or possessory right to the property assigned.

(4) It is taken without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under subdivision (a) of Section 3305.

(c) Subdivision (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under subdivision (b) of Section 3305.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement, then both of the following apply:

(1) The record has the same effect as if the record included such a statement.

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subdivision (d), this section does not displace law other than this division which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

9404. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to

subdivisions (b) to (e), inclusive, the rights of an assignee are subject to both of the following:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract.

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subdivision (c) and except as otherwise provided in subdivision (d), the claim of an account debtor against an assignor may be asserted against an assignee under subdivision (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this division requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health care insurance receivable.

9405. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor.

This subdivision is subject to subdivisions (b) to (d), inclusive.

(b) Subdivision (a) applies to the extent that either of the following apply:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance.

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under subdivision (a) of Section 9406.

(c) This section is subject to law other than this division which establishes a different rule for an account debtor who is an

individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health care insurance receivable.

9406. (a) Subject to subdivisions (b) to (i), inclusive, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subdivision (h), notification is ineffective under subdivision (a) as follows:

(1) If it does not reasonably identify the rights assigned.

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this division.

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if any of the following conditions is satisfied:

(A) Only a portion of the account, chattel paper, or general intangible has been assigned to that assignee.

(B) A portion has been assigned to another assignee.

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subdivision (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subdivision (a).

(d) Except as otherwise provided in subdivision (e) and in Sections 9407 and 10303, and subject to subdivision (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper,

payment intangible, or promissory note.

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subdivision (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in Sections 9407 and 10303, and subject to subdivisions (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation does either of the following:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper.

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subdivision (h), an account debtor may not waive or vary its option under paragraph (3) of subdivision (b).

(h) This section is subject to law other than this division which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health care insurance receivable.

9407. (a) Except as otherwise provided in subdivision (b), a term in a lease agreement is ineffective to the extent that it does either of the following:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods.

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in subdivision (g) of Section 10303, a term described in paragraph (2) of subdivision (a) is effective to the extent that there is either of the following:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term.

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subdivision (d) of Section 10303 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective.

9408. (a) Except as otherwise provided in subdivision (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) Subdivision (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, which prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or the creation of a security interest in, a promissory note, health care insurance

receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest.

(2) It provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subdivision (c) would be effective under law other than this division but is ineffective under subdivision (a) or (c), all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) It is not enforceable against the person obligated on the promissory note or the account debtor.

(2) It does not impose a duty or obligation on the person obligated on the promissory note or the account debtor.

(3) It does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party.

(4) It does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible.

(5) It does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor.

(6) It does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

9409. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or

creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice does, or would do, either of the following:

(1) It would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right.

(2) It provides that the assignment, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subdivision (a) but would be effective under law other than this division or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, all of the following rules apply with respect to the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) It is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary.

(2) It imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary.

(3) It does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

#### CHAPTER 5. FILING

9501. (a) Except as otherwise provided in subdivision (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is either of the following:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if either of the following conditions is satisfied:

(A) The collateral is as-extracted collateral or timber to be cut.

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures.

(2) The office of the Secretary of State in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture



filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

9502. (a) Subject to subdivision (b), a financing statement is sufficient only if it satisfies all of the following conditions:

- (1) It provides the name of the debtor.
- (2) It provides the name of the secured party or a representative of the secured party.
- (3) It indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in subdivision (b) of Section 9501, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subdivision (a) and also satisfy all of the following conditions:

- (1) Indicate that it covers this type of collateral.
- (2) Indicate that it is to be recorded in the real property records.
- (3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property.
- (4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if all of the following conditions are satisfied:

- (1) The record indicates the goods or accounts that it covers.
- (2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut.
- (3) The record complies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records.
- (4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

9503. (a) A financing statement sufficiently provides the name of the debtor only if it does so in accordance with the following rules:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized.

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate.

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement satisfies both of the following conditions:

(A) It provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors.

(B) It indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust.

(4) In other cases, according to the following rules:

(A) If the debtor has a name, only if it provides the individual or organizational name of the debtor.

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subdivision (a) is not rendered ineffective by the absence of either of the following:

(1) A trade name or other name of the debtor.

(2) Unless required under subparagraph (B) of paragraph (4) of subdivision (a), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

9504. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides either of the following:

(1) A description of the collateral pursuant to Section 9108.

(2) An indication that the financing statement covers all assets or all personal property.

9505. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in subdivision (a) of Section 9311, using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) This chapter applies to the filing of a financing statement under subdivision (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under subdivision (b) of Section 9311, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

9506. (a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subdivision (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with subdivision (a) of Section 9503 is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with subdivision (a) of Section 9503, the name provided does not make the financing statement seriously misleading.

(d) For purposes of subdivision (b) of Section 9508, the "debtor's correct name" in subdivision (c) means the correct name of the new debtor.

9507. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subdivision (c) and in Section 9508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the

financing statement becomes seriously misleading under Section 9506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 9506, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change.

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

9508. (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subdivision (a) to be seriously misleading under Section 9506, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under subdivision (d) of Section 9203.

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under subdivision (d) of Section 9203 unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under subdivision (a) of Section 9507.

9509. (a) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The debtor authorizes the filing in an authenticated record.

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security

agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering both of the following:

(1) The collateral described in the security agreement.

(2) Property that becomes collateral under paragraph (2) of subdivision (a) of Section 9315, whether or not the security agreement expressly covers proceeds.

(c) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if either of the following conditions is satisfied:

(1) The secured party of record authorizes the filing.

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subdivision (a) or (c) of Section 9513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(d) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subdivision (c).

9510. (a) A filed record is effective only to the extent that it was filed by a person that may file it under Section 9509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by subdivision (d) of Section 9515 is ineffective.

9511. (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under subdivision (a) of Section 9514, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under subdivision (b) of Section 9514, the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

9512. (a) Subject to Section 9509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subdivision (e), otherwise amend the information provided in, a financing statement by filing an amendment that does both of the following:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates.

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in paragraph (1) of subdivision (a) of Section 9501, provides the date that the initial financing statement was filed or recorded and the information specified in subdivision (b) of Section 9502.

(b) Except as otherwise provided in Section 9515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent that it does either of the following:

(1) It purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement.

(2) It purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

9513. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and either of the following conditions is satisfied:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subdivision (a), a secured party shall cause the secured party of record to file the termination statement in accordance with either of the following rules:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subdivision (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if any of the following conditions is satisfied:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value.

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation.

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession.

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 9510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

9514. (a) Except as otherwise provided in subdivision (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subdivision (c), a secured party of record may assign all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which does all of the following:

(1) Identifies, by its file number, the initial financing statement to which it relates.

(2) Provides the name of the assignor.

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under subdivision (c) of Section 9502 may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code.

9515. (a) Except as otherwise provided in subdivisions (b), (e), (f), and (g), a filed financing statement is effective for a period

of five years after the date of filing.

(b) Except as otherwise provided in subdivisions (e), (f), and (g), an initial financing statement filed in connection with a public finance transaction or manufactured home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public finance transaction or manufactured home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subdivision (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subdivision (a) or the 30-year period specified in subdivision (b), whichever is applicable.

(e) Except as otherwise provided in Section 9510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subdivision (c), unless, before the lapse, another continuation statement is filed pursuant to subdivision (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under subdivision (c) of Section 9502 remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

9516. (a) Except as otherwise provided in subdivision (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because of any of the following:



(1) The record is not communicated by a method or medium of communication authorized by the filing office.

(2) An amount equal to or greater than the applicable filing fee is not tendered.

(3) The filing office is unable to index the record because of any of the following:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor.

(B) In the case of an amendment or correction statement, either of the following applies with respect to the record:

(i) It does not identify the initial financing statement as required by Section 9512 or 9518, as applicable.

(ii) It identifies an initial financing statement whose effectiveness has lapsed under Section 9515.

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name.

(D) In the case of a record filed or recorded in the filing office described in paragraph (1) of subdivision (a) of Section 9501, the record does not provide a sufficient description of the real property to which it relates.

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record.

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not do any of the following:

(A) Provide a mailing address for the debtor.

(B) Indicate whether the debtor is an individual or an organization.

(C) If the financing statement indicates that the debtor is an organization, provide any of the following:

(i) A type of organization for the debtor.

(ii) A jurisdiction of organization for the debtor.

(iii) An organizational identification number for the debtor or indicate that the debtor has none.

(6) In the case of an assignment reflected in an initial financing statement under subdivision (a) of Section 9514 or an amendment filed under subdivision (b) of Section 9514, the record does not provide a name and mailing address for the assignee.

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by subdivision (d) of Section 9515.

(c) For purposes of subdivision (b), both of the following rules apply:

(1) A record does not provide information if the filing office is unable to read or decipher the information.

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9512, 9514, or 9518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subdivision (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

9517. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

9518. (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must do all of the following:

(1) Identify the record to which it relates by both of the following:

(A) The file number assigned to the initial financing statement to which the record relates.

(B) If the correction statement relates to a record filed or recorded in a filing office described in paragraph (1) of subdivision (a) of Section 9501, the date that the initial financing statement was filed or recorded and the information specified in subdivision (b) of Section 9502.

(2) Indicate that it is a correction statement.

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

9519. (a) For each record filed in a filing office, the filing office shall do all of the following:

(1) Assign a unique number to the filed record.

(2) Create a record that bears the number assigned to the filed record and the date and time of filing.

(3) Maintain the filed record for public inspection.

(4) Index the filed record in accordance with subdivisions (c), (d), and (e).

(b) Except as otherwise provided in subdivision (i), a file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number.

(2) Enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subdivisions (d) and (e), the filing office shall do both of the following:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement.

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be recorded and the filing office shall index it in accordance with both of the following rules:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described.

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subdivision (a) of Section 9514 or an amendment filed under subdivision (b) of Section 9514 in accordance with both of the following rules:

(1) Under the name of the assignor as grantor.

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the

assignee, under the name of the assignee.

(f) The filing office shall maintain a capability to do both of the following:

(1) Retrieve a record by the name of the debtor and by either of the following:

(A) If the filing office is described in paragraph (1) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates and the date that the record was filed or recorded.

(B) If the filing office is described in paragraph (2) of subdivision (a) of Section 9501, by the file number assigned to the initial financing statement to which the record relates.

(2) Associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9515 with respect to all secured parties of record.

(h) Except as otherwise provided in subdivision (i), the filing office shall perform the acts required by subdivisions (a) to (e), inclusive, at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Subdivisions (b) and (h) do not apply to a filing office described in paragraph (1) of subdivision (a) of Section 9501.

9520. (a) A filing office shall refuse to accept a record for filing for a reason set forth in subdivision (b) of Section 9516 and may refuse to accept a record for filing only for a reason set forth in subdivision (b) of Section 9516.

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication shall be made at the time and in the manner prescribed by filing-office rule, but in the case of a filing office described in paragraph (2) of subdivision (a) of Section 9501, in no event more than two business days after the filing office receives the record.

(c) A filed financing statement satisfying subdivisions (a) and (b) of Section 9502 is effective, even if the filing office is required to refuse to accept it for filing under subdivision (a). However, Section 9338 applies to a filed financing statement providing information described in paragraph (5) of subdivision (b) of Section 9516 which is incorrect at the time the financing

statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this chapter applies as to each debtor separately.

9521. (a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in subdivision (b) of Section 9516:

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in subdivision (b) of Section 9516:

9522. (a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 9515 with respect to all secured parties of record. The record shall be retrievable by using the name of the debtor and either of the following:

(1) If the record was filed or recorded in a filing office described in paragraph (1) of subdivision (a) of Section 9501, by using the file number assigned to the initial financing statement to which the record relates and the date the record was filed or recorded.

(2) If the record was filed in a filing office described in paragraph (2) of subdivision (a) of Section 9501, by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subdivision (a).

9523. (a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to paragraph (1) of subdivision (a) of Section 9519 and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead do both of the following:

(1) Note upon the copy the number assigned to the record pursuant to paragraph (1) of subdivision (a) of Section 9519 and the date and time of the filing of the record.

(2) Send the copy to the person.

(b) If a person files a record other than a written record, the

filing office shall communicate to the person an acknowledgment that provides all of the following information:

(1) The information in the record.

(2) The number assigned to the record pursuant to paragraph (1) of subdivision (a) of Section 9519.

(3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record all of the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that satisfies all of the following conditions:

(A) It designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request.

(B) It has not lapsed under Section 9515 with respect to all secured parties of record.

(C) If the request so states, it has lapsed under Section 9515 and a record of which is maintained by the filing office under subdivision (a) of Section 9522.

(2) The date and time of filing of each financing statement.

(3) The information provided in each financing statement.

(d) In complying with its duty under subdivision (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office described in paragraph (2) of subdivision (a) of Section 9501 shall perform the acts required by subdivisions (a) to (d), inclusive, at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) At least weekly, the filing office described in paragraph (2) of subdivision (a) of Section 9501 shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this chapter, in every medium from time to time available to the filing office.

9524. Delay by the filing office beyond a time limit prescribed in this chapter is excused if both of the following conditions are satisfied:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office.

(2) The filing office exercises reasonable diligence under the

circumstances.

9525. (a) Except as otherwise provided in subdivision (d), the fee for filing and indexing a record under this chapter, other than an initial financing statement of the kind described in subdivision (c) of Section 9502, is as follows:

(1) Ten dollars (\$10) if the record is communicated in writing and consists of one or two pages.

(2) Twenty dollars (\$20) if the record is communicated in writing and consists of more than two pages.

(3) Five dollars (\$5) if the record is communicated by another medium authorized by a rule adopted by the filing office.

(b) The number of names required to be indexed does not affect the amount of the fee in subdivision (a).

(c) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is as follows:

(1) Ten dollars (\$10) if the request is communicated in writing.

(2) Five dollars (\$5) if the request is communicated by another medium authorized by a rule adopted by the filing office.

(d) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subdivision (c) of Section 9502.

However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

9526. (a) The Secretary of State shall adopt and publish rules to implement this division. The filing-office rules shall be consistent with this division.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this chapter, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this chapter, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this division, in adopting, amending, and repealing filing-office rules, shall do all of the following:

(1) Consult with filing offices in other jurisdictions that enact substantially this chapter.

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization.

(3) Take into consideration the rules and practices of, and the

technology used by, filing offices in other jurisdictions that enact substantially this chapter.

9527. The Secretary of State shall report annually on or before January 31 to the Legislature on the operation of the filing office. The report must contain a statement of the extent to which both of the following apply:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this chapter and the reasons for these variations.

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

9528. Upon request of any person, the Secretary of State shall issue a combined certificate showing the information as to financing statements as specified in Section 9523, the information as to state tax liens as specified in Section 7226 of the Government Code, the information as to attachment liens as specified in Sections 488.375 and 488.405 of the Code of Civil Procedure, the information as to judgment liens as specified in Section 697.580 of the Code of Civil Procedure, and the information as to federal liens as specified in Section 2103 of the Code of Civil Procedure.

#### CHAPTER 6. DEFAULT

9601. (a) After default, a secured party has the rights provided in this chapter and, except as otherwise provided in Section 9602, those rights provided by agreement of the parties. A secured party may do both of the following:

(1) Reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure.

(2) If the collateral is documents, proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 9104, 9105, 9106, or 9107 has the rights and duties provided in Section 9207.

(c) The rights under subdivisions (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subdivision (g) and in Section 9605, after default, a debtor and an obligor have the rights provided in this chapter and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an



execution based upon the judgment relates back to the earliest of any of the following:

(1) The date of perfection of the security interest or agricultural lien in the collateral.

(2) The date of filing a financing statement covering the collateral.

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this division.

(g) Except as otherwise provided in subdivision (c) of Section 9607, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

9602. Except as otherwise provided in Section 9624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Subparagraph (C) of paragraph (4) of subdivision (b) of Section 9207, which deals with use and operation of the collateral by the secured party.

(2) Section 9210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account.

(3) Subdivision (c) of Section 9607, which deals with collection and enforcement of collateral.

(4) Subdivision (a) of Section 9608 and subdivision (c) of Section 9615 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition.

(5) Subdivision (a) of Section 9608 and subdivision (d) of Section 9615 to the extent that they require accounting for or payment of surplus proceeds of collateral.

(6) Section 9609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace.

(7) Subdivision (b) of Section 9610, and Sections 9611, 9613, and 9614, which deal with disposition of collateral.

(8) Subdivision (f) of Section 9615, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor.

(9) Section 9616, which deals with explanation of the calculation

of a surplus or deficiency.

(10) Section 9620, 9621, and 9622, which deal with acceptance of collateral in satisfaction of obligation.

(11) Section 9623, which deals with redemption of collateral.

(12) Section 9624, which deals with permissible waivers.

(13) Sections 9625 and 9626, which deal with the existence of a deficiency and with the secured party's liability for failure to comply with this division.

9603. (a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 9602 if the standards are not manifestly unreasonable.

(b) Subdivision (a) does not apply to the duty under Section 9609 to refrain from breaching the peace.

9604. (a) If an obligation secured by a security interest in personal property or fixtures is also secured by an interest in real property or an estate therein:

(1) The secured party may do any of the following:

(A) Proceed, in any sequence, (i) in accordance with the secured party's rights and remedies in respect of real property as to the real property security, and (ii) in accordance with this chapter as to the personal property or fixtures.

(B) Proceed in any sequence, as to both, some, or all of the real property and some or all of the personal property or fixtures in accordance with the secured party's rights and remedies in respect of the real property, by including the portion of the personal property or fixtures selected by the secured party in the judicial or nonjudicial foreclosure of the real property in accordance with the procedures applicable to real property. In proceeding under this subparagraph, (i) no provision of this chapter other than this subparagraph, subparagraph (C) of paragraph (4), and paragraphs (7) and (8) shall apply to any aspect of the foreclosure; (ii) a power of sale under the deed of trust or mortgage shall be exercisable with respect to both the real property and the personal property or fixtures being sold; and (iii) the sale may be conducted by the mortgagee under the mortgage or by the trustee under the deed of trust. The secured party shall not be deemed to have elected irrevocably to proceed as to both real property and personal property or fixtures as provided in this subparagraph with respect to any particular property, unless and until that particular property actually has been disposed of pursuant to a unified sale (judicial or nonjudicial) conducted in accordance with the procedures applicable to real property, and then only as to the property so sold.

(C) Proceed, in any sequence, as to part of the personal property

or fixtures as provided in subparagraph (A), and as to other of the personal property or fixtures as provided in subparagraph (B).

(2) (A) Except as otherwise provided in paragraph (3), provisions and limitations of any law respecting real property and obligations secured by an interest in real property or an estate therein, including, but not limited to, Section 726 of the Code of Civil Procedure, provisions regarding acceleration or reinstatement of obligations secured by an interest in real property or an estate therein, prohibitions against deficiency judgments, limitations on deficiency judgments based on the value of the collateral, limitations on the right to proceed as to collateral, and requirements that a creditor resort either first or at all to its security, do not in any way apply to either (i) any personal property or fixtures other than personal property or fixtures as to which the secured party has proceeded or is proceeding under subparagraph (B) of paragraph (1), or (ii) the obligation.

(B) Pursuant to, but without limiting subparagraph (A), in the event that an obligation secured by personal property or fixtures would otherwise become unenforceable by reason of Section 726 of the Code of Civil Procedure or any requirement that a creditor resort first to its security, then, notwithstanding that section or any similar requirement, the obligation shall nevertheless remain enforceable to the full extent necessary to permit a secured party to proceed against personal property or fixtures securing the obligation in accordance with the secured party's rights and remedies as permitted under this chapter.

(3) (A) Paragraph (2) does not limit the application of Section 580b of the Code of Civil Procedure.

(B) If the secured party commences an action, as defined in Section 22 of the Code of Civil Procedure, and the action seeks a monetary judgment on the debt, paragraph (2) does not prevent the assertion by the debtor or an obligor of any right to require the inclusion in the action of any interest in real property or an estate therein securing the debt. If a monetary judgment on the debt is entered in the action, paragraph (2) does not prevent the assertion by the debtor or an obligor of the subsequent unenforceability of the encumbrance on any interest in real property or an estate therein securing the debt and not included in the action.

(C) Nothing in paragraph (2) shall be construed to excuse compliance with Section 2924c of the Civil Code as a prerequisite to the sale of real property, but that section has no application to the right of a secured party to proceed as to personal property or fixtures except, and then only to the extent that, the secured party is proceeding as to personal property or fixtures in a unified sale

as provided in subparagraph (B) of paragraph (1).

(D) Paragraph (2) does not deprive the debtor of the protection of Section 580d of the Code of Civil Procedure against a deficiency judgment following a sale of the real property collateral pursuant to a power of sale in a deed of trust or mortgage.

(E) Paragraph (2) shall not affect, nor shall it determine the applicability or inapplicability of, any law respecting real property or obligations secured in whole or in part by real property with respect to a loan or a credit sale made to any individual primarily for personal, family, or household purposes.

(F) Paragraph (2) does not deprive the debtor or an obligor of the protection of Section 580a of the Code of Civil Procedure following a sale of real property collateral.

(G) If the secured party violates any statute or rule of law that requires a creditor who holds an obligation secured by an interest in real property or an estate therein to resort first to its security before resorting to any property of the debtor that does not secure the obligation, paragraph (2) does not prevent the assertion by the debtor or an obligor of any right to require correction of the violation, any right of the secured party to correct the violation, or the assertion by the debtor or an obligor of the subsequent unenforceability of the encumbrance on any interest in real property or an estate therein securing the obligation, or the assertion by the debtor or an obligor of the subsequent unenforceability of the obligation except to the extent that the obligation is preserved by subparagraph (B) of paragraph (2).

(4) If the secured party realizes proceeds from the disposition of collateral that is personal property or fixtures, the following provisions shall apply:

(A) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any nonmonetary default.

(B) The disposition of the collateral, the realization of the proceeds, the application of the proceeds, or any one or more of the foregoing shall not operate to cure any monetary default (although the application of the proceeds shall, to the extent of those proceeds, satisfy the secured obligation) so as to affect in any way

the secured party's rights and remedies under this chapter with respect to any remaining personal property or fixtures collateral.

(C) All proceeds so realized shall be applied by the secured party to the secured obligation in accordance with the agreement of the parties and applicable law.

(5) An action by the secured party utilizing any available

judicial procedure shall in no way be affected by omission of a prayer for a monetary judgment on the debt. Notwithstanding Section 726 of the Code of Civil Procedure, any prohibition against splitting causes of action or any other statute or rule of law, a judicial action which neither seeks nor results in a monetary judgment on the debt shall not preclude a subsequent action seeking a monetary judgment on the debt or any other relief.

(6) As used in this subdivision, "monetary judgment on the debt" means a judgment for the recovery from the debtor of all or part of the principal amount of the secured obligation, including, for purposes of this subdivision, contractual interest thereon. "Monetary judgment on the debt" does not include a judgment which provides only for other relief (whether or not that other relief is secured by the collateral), such as one or more forms of nonmonetary relief, and monetary relief ancillary to any of the foregoing, such as attorneys' fees and costs incurred in seeking the relief.

(7) If a secured party fails to comply with the procedures applicable to real property in proceeding as to both real and personal property under subparagraph (B) of paragraph (1), a purchaser for value of any interest in the real property at judicial or nonjudicial foreclosure proceedings conducted pursuant to subparagraph (B) of paragraph (1) takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless:

(A) The purchaser is the secured party and the failure to comply with this chapter occurred other than in good faith; or

(B) The purchaser is other than the secured party and at the time of sale of the real property at that foreclosure the purchaser had knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

Even if the purchaser at the foreclosure sale does not take his or her interest free of claims, interests, or title defects based upon that noncompliance with this chapter, a subsequent purchaser for value who acquires an interest in that real property from the purchaser at that foreclosure takes that interest free from any claim or interest of another person, or any defect in title, based upon that noncompliance, unless at the time of acquiring the interest the subsequent purchaser has knowledge of the failure to comply with this chapter and that the noncompliance occurred other than in good faith.

(8) If a secured party proceeds by way of a unified sale under subparagraph (B) of paragraph (1), then, for purposes of applying Section 580a or subdivision (b) of Section 726 of the Code of Civil Procedure to any such unified sale, the personal property or fixtures

included in the unified sale shall be deemed to be included in the "real property or other interest sold," as that term is used in Section 580a or subdivision (b) of Section 726 of the Code of Civil Procedure.

9605. A secured party does not owe a duty based on its status as secured party to either of the following persons:

(1) To a person that is a debtor or obligor, unless the secured party knows all of the following:

(A) That the person is a debtor or obligor.

(B) The identity of the person.

(C) How to communicate with the person.

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:

(A) That the person is a debtor.

(B) The identity of the person.

9606. For purposes of this chapter, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

9607. (a) If so agreed, and in any event after default, a secured party may do all of the following:

(1) Notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party.

(2) Take any proceeds to which the secured party is entitled under Section 9315.

(3) Enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral.

(4) If it holds a security interest in a deposit account perfected by control under paragraph (1) of subdivision (a) of Section 9104, apply the balance of the deposit account to the obligation secured by the deposit account.

(5) If it holds a security interest in a deposit account perfected by control under paragraph (2) or (3) of subdivision (a) of Section 9104, instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under paragraph (3) of subdivision (a) the right of a debtor to enforce a

mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded both of the following:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage.

(2) The secured party's sworn affidavit in recordable form stating both of the following:

(A) That a default has occurred.

(B) That the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if both of the following apply with respect to the secured party:

(1) It undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral.

(2) It is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subdivision (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

9608. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made.

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the

interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subparagraph (C) of paragraph (1).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and except as otherwise provided in subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency. Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds applies only if the security agreement provides that the debtor is entitled to any surplus.

9609. (a) After default, a secured party may do both of the following:

(1) Take possession of the collateral.

(2) Without removal, render equipment unusable and dispose of collateral on a debtor's premises under Section 9610.

(b) A secured party may proceed under subdivision (a) in either of the following ways:

(1) Pursuant to judicial process.

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

9610. (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral at either of the following:



(1) At a public disposition.

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subdivision (d) in either of the following ways:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition.

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subdivision (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

9611. (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition.

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subdivision (d), a secured party that disposes of collateral under Section 9610 shall send to the persons specified in subdivision (c) a reasonable authenticated notification of disposition.

(c) To comply with subdivision (b), the secured party shall send an authenticated notification of disposition to all of the following persons:

(1) The debtor.

(2) Any secondary obligor.

(3) If the collateral is other than consumer goods to both of the following persons:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral.

(B) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement with

respect to which all of the following apply:

- (i) It identified the collateral.
- (ii) It was indexed under the debtor's name as of that date.
- (iii) It was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date.

(C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subdivision (a) of Section 9311.

(d) Subdivision (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed in subparagraph (B) of paragraph (3) of subsection (c) if it satisfies both of the following conditions:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subparagraph (B) of paragraph (3) of subdivision (c).

(2) Before the notification date, the secured party either:

(A) Did not receive a response to the request for information.

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response whose financing statement covered the collateral.

9612. (a) Except as otherwise provided in subdivision (b), whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

9613. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification does all of the following:

(A) It describes the debtor and the secured party.

(B) It describes the collateral that is the subject of the intended disposition.

(C) It states the method of intended disposition.

(D) It states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting.

(E) It states the time and place of a public sale or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes either of the following:

(A) Information not specified by that paragraph.

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in subdivision (3) of Section 9614, when completed, each provides sufficient information:

#### NOTIFICATION OF DISPOSITION OF COLLATERAL

To:

---

(Name of debtor, obligor, or other person to which  
the notification is sent)

From:

---

(Name, address, and telephone number of  
secured party)

Name of Debtor(s):

---

(Include only if debtor(s) are not an  
addressee)

(For a public disposition:)

We will sell (or lease or license, as applicable)

the \_\_\_\_\_ (to the highest qualified bidder in  
public

(describe collateral)  
as follows:)

Day and Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

(For a private disposition:)

We will sell (or license, as applicable) the

\_\_\_\_\_  
describe  
collateral  
privately sometime after

\_\_\_\_\_.  
(day and date)  
You are entitled to an accounting of the unpaid indebtedness  
secured  
by the property that we intend to sell (or lease or license, as  
applicable) (for a charge of \$\_\_\_\_). You may request an  
accounting  
by calling us at

\_\_\_\_\_  
(telephone number)

9614. In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide all of the  
following information:

(A) The information specified in subdivision (1) of Section 9613.

(B) A description of any liability for a deficiency of the person  
to which the notification is sent.

(C) A telephone number from which the amount that must be paid to  
the secured party to redeem the collateral under Section 9623 is  
available.

(D) A telephone number or mailing address from which additional  
information concerning the disposition and the obligation secured is  
available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides  
sufficient information:

\_\_\_\_\_  
Name and address of secured party)

\_\_\_\_\_  
(Date)

## NOTICE OF OUR PLAN TO SELL PROPERTY

---

(Name and address of any obligor who is also a debtor)  
Subject: \_\_\_\_\_

---

(Identification of Transaction)  
We have your \_\_\_\_\_, because you broke  
promises \_\_\_\_\_  
(describe collateral)  
in our agreement.

(For a public disposition:)  
We will sell \_\_\_\_\_, at public sale. A  
sale \_\_\_\_\_  
(describe collateral)  
could include a lease or license. The sale will be held as  
follows:

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

You may attend the sale and bring bidders if you want.

(For a private disposition:)  
We will sell \_\_\_\_\_ at private sale sometime

\_\_\_\_\_ (describe collateral)  
after \_\_\_\_\_.  
(date)

A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will  
reduce the amount you owe. If we get less money than you owe,  
you \_\_\_\_\_ still owe us the  
(will or will not, as applicable)  
difference. If we get more money than you owe, you will get the  
extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments),

including our expenses. To learn the exact amount you must pay, call us at \_\_\_\_\_.  
(telephone number)

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at \_\_\_\_\_ (or write us at \_\_\_\_\_)  
(telephone number) (secured party's address)

and request a written explanation. (We will charge you \$ \_\_\_\_\_ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at \_\_\_\_\_ (or write us at \_\_\_\_\_).  
(telephone number) (secured party's address)

We are sending this notice to the following other people who have an interest in \_\_\_\_\_ or who owe money under

(describe collateral)  
your agreement:

\_\_\_\_\_  
(Names of all other debtors and obligors, if any)

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this division.

(6) If a notification under this section is not in the form of paragraph (3), law other than this division determines the effect of including information not required by paragraph (1).

9615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to each of the following:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party.

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made.

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if both of the following conditions are satisfied:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds or notice of the levy of attachment or execution before distribution of the proceeds is completed.

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor.

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under paragraph (3) of subdivision (a).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subdivision (a) and permitted by subdivision (c), both of the following apply:

(1) Unless paragraph (4) of subdivision (a) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus except as provided in Section 701.040 of the Code of Civil Procedure.

(2) Subject to subdivision (b) of Section 9626, the obligor is liable for any deficiency.

(e) (1) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, both of the following apply:

(A) The debtor is not entitled to any surplus.

(B) The obligor is not liable for any deficiency.

(2) Subdivision (b) of Section 701.040 of the Code of Civil Procedure relating to the payment of proceeds and the liability of the secured party applies only if the security agreement provides that the debtor is entitled to any surplus.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this chapter to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if both of the following apply:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor.

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) The following rules apply with respect to a secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) The secured party takes the cash proceeds free of the security interest or other lien.

(2) The secured party is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien.

(3) The secured party is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

9616. (a) In this section:

(1) "Explanation" means a writing that contains all of the following:

(A) States the amount of the surplus or deficiency.

(B) Provides an explanation in accordance with subdivision (c) of how the secured party calculated the surplus or deficiency.

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency.

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record that is all of the following:

(A) Authenticated by a debtor or consumer obligor.



(B) Requesting that the recipient provide an explanation.

(C) Sent after disposition of the collateral under Section 9610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9615, the secured party shall do either of the following:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and in accordance with both of the following:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency.

(B) Within 14 days after receipt of a request.

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subparagraph (B) of paragraph (1) of subdivision (a), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date in accordance with either of the following:

(A) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession.

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.

(2) The amount of proceeds of the disposition.

(3) The aggregate amount of the obligations after deducting the amount of proceeds.

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition.

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1).

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subdivision (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to paragraph (1) of subdivision (b). The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

9617. (a) A secured party's disposition of collateral after default does all of the following:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral.

(2) Discharges the security interest under which the disposition is made.

(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subdivision (a), even if the secured party fails to comply with this division or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subdivision (a), the transferee takes the collateral subject to all of the following:

(1) The debtor's rights in the collateral.

(2) The security interest or agricultural lien under which the disposition is made.

(3) Any other security interest or other lien.

9618. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after any of the following occurs:

(1) The secondary obligor receives an assignment of a secured obligation from the secured party.

(2) The secondary obligor receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party.

(3) The secondary obligor is subrogated to the rights of a secured party with respect to collateral.

(b) Both of the following rules apply with respect to an assignment, transfer, or subrogation described in subdivision (a):

(1) It is not a disposition of collateral under Section 9610.

(2) It relieves the secured party of further duties under this division.

9619. (a) In this section, "transfer statement" means a record authenticated by a secured party stating all of the following:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral.

(2) That the secured party has exercised its postdefault remedies with respect to the collateral.

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral.

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate of title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall do all of the following:

(1) Accept the transfer statement.

(2) Promptly amend its records to reflect the transfer.

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subdivision (b) or otherwise is not of itself a disposition of collateral under this division and does not of itself relieve the secured party of its duties under this division.

9620. (a) Except as otherwise provided in subdivision (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if all of the following conditions are satisfied:

(1) The debtor consents to the acceptance under subdivision (c).

(2) The secured party does not receive, within the time set forth in subdivision (d), a notification of objection to the proposal authenticated by either of the following:

(A) A person to which the secured party was required to send a proposal under Section 9621.

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal.

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance.

(4) Subdivision (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless both of the following conditions are satisfied:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor.

(2) The conditions of subdivision (a) are met.

(c) For purposes of this section both of the following rules apply:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default.

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party does all of the following:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained.

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures.

(C) Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) To be effective under paragraph (2) of subdivision (a), a notification of objection must be received by the secured party as follows:

(1) In the case of a person to which the proposal was sent pursuant to Section 9621, within 20 days after notification was sent to that person.

(2) In other cases, in accordance with either of the following:

(A) Within 20 days after the last notification was sent pursuant to Section 9621.

(B) If a notification was not sent, before the debtor consents to the acceptance under subdivision (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 9610 within the time specified in subdivision (f) if either of the following conditions has been satisfied:

(1) Sixty percent of the cash price has been paid in the case of a purchase money security interest in consumer goods.

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase money security interest in consumer goods.

(f) To comply with subdivision (e), the secured party shall

dispose of the collateral within either of the following time periods:

(1) Within 90 days after taking possession.

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

9621. (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to all of the following persons:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral.

(2) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that satisfied all of the following conditions:

(A) It identified the collateral.

(B) It was indexed under the debtor's name as of that date.

(C) It was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date.

(3) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subdivision (a) of Section 9311.

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subdivision (a).

9622. (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures does all of the following:

(1) It discharges the obligation to the extent consented to by the debtor.

(2) It transfers to the secured party all of a debtor's rights in the collateral.

(3) It discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien.

(4) It terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subdivision (a), even if the secured party fails to comply with this

division.

9623. (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender both of the following:

(1) Fulfillment of all obligations secured by the collateral.

(2) The reasonable expenses and attorney's fees described in paragraph (1) of subdivision (a) of Section 9615.

(c) A redemption may occur at any time before a secured party has done any of the following:

(1) Collected collateral under Section 9607.

(2) Disposed of collateral or entered into a contract for its disposition under Section 9610.

(3) Accepted collateral in full or partial satisfaction of the obligation it secures under Section 9622.

9624. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under subdivision (e) of Section 9620 only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9623 only by an agreement to that effect entered into and authenticated after default.

9625. (a) If it is established that a secured party is not proceeding in accordance with this division, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subdivisions (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this division. Loss caused by a failure to comply with a request under Section 9210 may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9628, a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subdivision (b) for its loss.

(d) A debtor whose deficiency is eliminated under Section 9626 may recover damages for the loss of any surplus. However, in a transaction other than a consumer transaction, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9626

may not otherwise recover under subdivision (b) for noncompliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subdivision (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from any of the following persons:

- (1) A person that fails to comply with Section 9208.
- (2) A person that fails to comply with Section 9209.
- (3) A person that files a record that the person is not entitled to file under subdivision (a) of Section 9509.
- (4) A person that fails to cause the secured party of record to file or send a termination statement as required by subdivision (a) or (c) of Section 9513.
- (5) A person that fails to comply with paragraph (1) of subdivision (b) of Section 9616 and whose failure is part of a pattern, or consistent with a practice, of noncompliance.
- (6) A person that fails to comply with paragraph (2) of subdivision (b) of Section 9616.

(f) A debtor or consumer obligor may recover damages under subdivision (b) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 9210. A recipient of a request under Section 9210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subdivision.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9210, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

9626. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this chapter.

(3) Except as otherwise provided in Section 9628, if a secured

party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of either of the following:

(A) The proceeds of the collection, enforcement, disposition, or acceptance.

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this chapter relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of subparagraph (B) of paragraph (3), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) In a consumer transaction, the following rules apply:

(1) In an action in which a deficiency or a surplus is an issue:

(A) A secured party has the burden of proving compliance with the provisions of this chapter relating to collection, enforcement, disposition, and acceptance whether or not the debtor or a secondary obligor places the secured party's compliance in issue.

(B) If a deficiency or surplus is calculated under subdivision (f) of Section 9615, the secured party has the burden of establishing that the amount of proceeds of the disposition is not significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The debtor or any secondary obligor is liable for any deficiency only if all of the following conditions are met:

(A) It is not otherwise agreed or otherwise provided in the Retail Installment Sales Act (Chapter 1 (commencing with Section 1801), Title 2, Part 4, Division 3, Civil Code), and, in particular, Section 1812.5 of the Civil Code or any other statute.

(B) The debtor and obligor were given notice, in accordance with Sections 9611, 9612, and 9613, or Section 9614, as applicable, of the disposition of the collateral.



(C) The collection, enforcement, disposition, and acceptance by the secured party were conducted in good faith and in a commercially reasonable manner.

(3) Upon entry of a final judgment that the debtor or obligor is not liable for a deficiency by reason of paragraph (2) or subdivision (f) of Section 9615, the secured party may neither obtain a deficiency judgment nor retain a security interest in any other collateral of the debtor or obligor that secured the indebtedness for which the debtor or obligor is no longer liable.

(4) If, subsequent to a disposition that does not satisfy any one or more of the conditions set forth in paragraph (2), or subsequent to a disposition that is subject to subdivision (f) of Section 9615, the secured party disposes pursuant to this section of other collateral securing the same indebtedness, the debtor or obligor may, to the extent he or she is no longer liable for a deficiency judgment by reason of paragraph (2) or subdivision (f) of Section 9615, recover the proceeds realized from the subsequent dispositions, as well as any damages to which the debtor may be entitled if the subsequent disposition is itself noncomplying or otherwise wrongful.

(5) Nothing herein shall deprive the debtor of any right to recover damages from the secured party under subdivision (a) of Section 9625, or to offset any such damages against any claim by the secured party for a deficiency, or of any right or remedy to which the debtor may be entitled under any other law. A debtor or obligor in a consumer transaction shall not have any damages owed to it reduced by the amount of any deficiency that would have resulted had the disposition of the collateral by the secured party been conducted in conformity with this division.

(6) The secured party shall account to the debtor for any surplus, except as provided in Section 701.040 of the Code of Civil Procedure.

9627. (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition satisfies any of the following conditions:

- (1) It is made in the usual manner on any recognized market.
- (2) It is made at the price current in any recognized market at

the time of the disposition.

(3) It is made otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved in or by any of the following:

- (1) In a judicial proceeding.
- (2) By a bona fide creditors' committee.
- (3) By a representative of creditors.
- (4) By an assignee for the benefit of creditors.

(d) Approval under subdivision (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

9628. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person both of the following rules apply:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this division.

(2) The secured party's failure to comply with this division does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party to either of the following persons:

(1) To a person that is a debtor or obligor, unless the secured party knows all of the following:

- (A) That the person is a debtor or obligor.
- (B) The identity of the person.
- (C) How to communicate with the person.

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows both of the following:

- (A) That the person is a debtor.
- (B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on either of the following representations:

- (1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held.
- (2) An obligor's representation concerning the purpose for which a

secured obligation was incurred.

(d) A secured party is not liable under paragraph (2) of subdivision (c) of Section 9625 more than once with respect to any one secured obligation.

9629. No renunciation or modification by the debtor of any of his or her rights under this chapter as to consumer goods shall be valid or enforceable unless the renunciation or modification is in consideration of a waiver by the secured party of any right to a deficiency on the debt.

#### CHAPTER 7. TRANSITION

9701. This division shall become operative on July 1, 2001.

9702. (a) Except as otherwise provided in this chapter, this division applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this division takes effect.

(b) Except as otherwise provided in subdivision (c) and in Sections 9703 to 9708, inclusive, both of the following rules apply:

(1) Transactions and liens that were not governed by former Division 9, were validly entered into or created before July 1, 2001, and would be subject to this act if they had been entered into or created after July 1, 2001, and the rights, duties, and interests flowing from those transactions and liens remain valid after July 1, 2001.

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this division or by the law that otherwise would apply if this division had not taken effect.

(c) This division does not affect an action, case, or proceeding commenced before July 1, 2001.

9703. (a) A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this division if, on July 1, 2001, the applicable requirements for enforceability and perfection under this division are satisfied without further action.

(b) Except as otherwise provided in Section 9705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this division are not satisfied on July 1, 2001, when all of the following rules apply with respect to

the security interest:

- (1) It is a perfected security interest until July 1, 2002.
- (2) It remains enforceable thereafter only if the security interest becomes enforceable under Section 9203 before July 1, 2002.

(3) It remains perfected thereafter only if the applicable requirements for perfection under this division are satisfied before July 1, 2002.

9704. All of the following rules apply with respect to a security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) It remains an enforceable security interest until July 1, 2002.
- (2) It remains enforceable thereafter if the security interest becomes enforceable under Section 9203 on July 1, 2001, or on July 1, 2002.
- (3) It becomes perfected in either of the following ways:
  - (A) Without further action, on July 1, 2001, if the applicable requirements for perfection under this division are satisfied on or before that time.

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

9705. (a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this division on or before July 1, 2002. An attached security interest becomes unperfected on July 1, 2002, unless the security interest becomes a perfected security interest under this division before that date.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this division.

(c) This division does not render ineffective an effective financing statement that is filed before July 1, 2001, and that has satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103. However, except as otherwise provided in subdivisions (d) and (e) and in Section 9706, the financing statement ceases to be effective at the earlier of either of the following:

- (1) The time the financing statement would have ceased to be

effective under the law of the jurisdiction in which it is filed.

(2) June 30, 2006.

(d) The filing of a continuation statement after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Chapter 3 (commencing with Section 9301), the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) Paragraph (2) of subdivision (c) applies to a financing statement that is filed against a transmitting utility before July 1, 2001, and that has satisfied the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 9103 only to the extent that Chapter 3 (commencing with Section 9301) provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement.

9706. (a) The filing of an initial financing statement in the office specified in Section 9501 continues the effectiveness of a financing statement filed before July 1, 2001, if all of the following conditions are satisfied:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this division.

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this state.

(3) The initial financing statement satisfies subdivision (c).

(b) The filing of an initial financing statement under subdivision (a) continues the effectiveness of the pre-effective-date financing statement for the following periods:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in former Section 9403 with respect to a financing statement.

(2) If the initial financing statement is filed after July 1, 2001, for the period provided in Section 9515 with respect to an initial financing statement.

(c) To be effective for purposes of subdivision (a), an initial financing statement must do all of the following:

(1) Satisfy the requirements of Chapter 5 (commencing with Section 9501) for an initial financing statement.

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement.

(3) Indicate that the pre-effective-date financing statement remains effective.

9707. A person may file an initial financing statement or a continuation statement under this chapter if both of the following conditions are satisfied:

(1) The secured party of record authorizes the filing.

(2) The filing is necessary under this chapter to do either of the following:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001.

(B) To perfect or continue the perfection of a security interest.

9708. (a) This division determines priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Division 9 (commencing with Section 9101) determines priority.

(b) For purposes of subdivision (a) of Section 9322, the priority of a security interest that becomes enforceable under Section 9203 dates from July 1, 2001, if the security interest is perfected under this division by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under former Division 9 (commencing with Section 9101). This subdivision does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

SEC. 36. Section 10103 of the Commercial Code is amended to read:

10103. (a) In this division, unless the context otherwise requires:

(1) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of

other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.

(6) "Fault" means wrongful act, omission, breach, or default.

(7) "Finance lease" means a lease with respect to which (A) the lessor does not select, manufacture, or supply the goods, (B) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and (C) one of the following occurs:

(i) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract.

(ii) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract.

(iii) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods.

(iv) The lessor, before the lessee signs the lease contract, informs the lessee in writing (aa) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right

to possession and use of the goods from that person, (bb) that the lessee is entitled under this division to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (cc) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(8) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 10309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this division. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this division and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(15) "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary



course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this division and the sections in which they appear are:

"Accessions." Subdivision (a) of Section 10310.

"Construction mortgage." Paragraph (4) of subdivision (a) of Section 10309.

"Encumbrance." Paragraph (5) of subdivision (a) of Section 10309.

"Fixtures." Paragraph (1) of subdivision (a) of Section 10309.

"Fixture filing." Paragraph (2) of subdivision (a) of Section 10309.

"Purchase money lease." Paragraph (3) of subdivision (a) of Section 10309.

(c) The following definitions in other divisions apply to this division:

"Account." Paragraph (2) of subdivision (a) of Section 9102.

"Between merchants." Subdivision (3) of Section 2104.

"Buyer." Paragraph (a) of subdivision (1) of Section 2103.

"Chattel paper." Paragraph (11) of subdivision (a) of Section 9102.

"Consumer goods." Paragraph (23) of subdivision (a) of Section 9102.

"Document." Paragraph (30) of subdivision (a) of Section 9102.

"Entrusting." Subdivision (3) of Section 2403.

"General intangible." Paragraph (42) of subdivision (a) of Section 9102.

"Good faith." Paragraph (b) of subdivision (1) of Section 2103.

"Instrument." Paragraph (47) of subdivision (a) of Section 9102.

"Merchant." Subdivision (1) of Section 2104.

"Mortgage." Paragraph (55) of subdivision (a) of Section 9102.

"Pursuant to commitment." Paragraph (68) of subdivision (a) of Section 9102.

"Receipt." Paragraph (c) of subdivision (1) of Section 2103.

"Sale." Subdivision (1) of Section 2106.

"Sale on approval." Section 2326.

"Sale or return." Section 2326.

"Seller." Paragraph (d) of subdivision (1) of Section 2103.

(d) In addition, Division 1 contains general definitions and principles of construction and interpretation applicable throughout this division.

SEC. 37. Section 10303 of the Commercial Code is amended to read:

10303. (a) As used in the section, "creation of a security interest" includes the sale of a lease contract that is subject to Division 9 (commencing with Section 9101), Secured Transactions, by reason of paragraph (3) of subdivision (a) of Section 9109.

(b) Except as provided in subdivision (c) and Section 9407, a provision in a lease agreement which (1) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (2) makes such a transfer an event of default, gives rise to the rights and remedies provided in subdivision (d), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(c) A provision in a lease agreement which (1) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (2) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subdivision (d).

(d) Subject to subdivision (c) and Section 9407:

(1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subdivision (b) of Section 10501.

(2) If paragraph (1) is not applicable and if a transfer is made that (A) is prohibited under a lease agreement or (B) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (C) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (D) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(e) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform

those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(f) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(g) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

SEC. 38. Section 10307 of the Commercial Code is amended to read:

10307. (a) Except as otherwise provided in Section 10306, a creditor of a lessee takes subject to the lease contract.

(b) Except as otherwise provided in subdivision (c) and in Sections 10306 and 10308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(c) Except as otherwise provided in Sections 9317, 9321, and 9323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

SEC. 39. Section 10309 of the Commercial Code is amended to read:

10309. (a) In this section:

(1) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(2) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of subdivisions (a) and (b) of Section 9502;

(3) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(4) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(5) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(b) Under this division a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this division of ordinary building materials incorporated into

an improvement on land.

(c) This division does not prevent creation of a lease of fixtures pursuant to real estate law.

(d) The interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(1) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed before the goods become fixtures or within 20 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(2) A fixture filing covering the fixtures is filed before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate;

(3) The fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease;

(4) The conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(5) The encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(6) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(e) Notwithstanding paragraph (1) of subdivision (d) but otherwise subject to subdivision (d), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(f) In cases not within the preceding subdivisions, priority between the interest of a lessor of fixtures, including the lessor's

residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(g) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (1) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this division, or (2) if necessary to enforce other rights and remedies of the lessor or lessee under this division, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

SEC. 40. Section 13102 of the Commercial Code is amended to read:

13102. Transactions validly entered into before January 1, 1965, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred; provided, however, that the perfection of a security interest (other than a security interest (i) in a motor vehicle or vessel required to be registered under the Vehicle Code unless such vehicle or vessel is inventory or (ii) in personal property, including fixtures, which constitutes a portion of the properties included in an agreement which is a mortgage or deed of trust of both real and personal property made to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations, or made by a public utility as defined in the Public Utilities Code), as defined in this code (Section 1201), and however denominated in any law repealed by this act, (a) Which was perfected on or before January 1, 1965, by a filing or recording under a law repealed by this act and requiring a further filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing or recording. (b) Which was perfected on or before January 1, 1965, by a filing or recording under a law repealed

by this act and requiring no further filing or recording to continue its perfection, continues until and will lapse 12 months after January 1, 1965. (c) Which was perfected on or before January 1, 1965, without any filing or recording, but with respect to which a financing statement is required to be filed in order for it to be perfected under this code, continues until and will lapse 12 months after January 1, 1965; unless, in each case, a continuation statement is filed by the secured party within 12 months before the perfection of the security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the original security agreement, however denominated, state the office where and the date when last filed or refiled, or recorded or rerecorded, and the filing number or recordation data and further state that the original security agreement is still effective. Subdivision (1) of Section 9501 determines the proper place to file such a continuation statement. Except as herein specified the provisions of Sections 9515 and 9522 apply to such a continuation statement.

SEC. 41. Section 13105 of the Commercial Code is amended to read:

13105. (1) A financing statement or a continuation thereof, properly filed and effective pursuant to Section 9401 as it existed prior to January 1, 1971, remains valid and effective after January 1, 1971, until expiration of the usual five-year period from date of filing. Any termination, release, assignment, or amendment of the financing statement prior to expiration of the five-year period of effectiveness shall be filed, as previously required, with the county recorder who has filed the financing statement.

(2) After January 1, 1971, any continuation of a financing statement which had been properly filed with a county recorder prior to January 1, 1971, and which now would be required to be filed with the Secretary of State, shall be filed with the Secretary of State in accordance with Sections 9515 and 9516. The continuation statement shall be accompanied by a certified copy of the entire record of the county recorder related to the financing statement. After filing of the continuation statement with the Secretary of State, any termination, release, assignment, amendment, or continuation of the financing statement shall also be filed with the Secretary of State and any documents affecting the financing statement that are not filed with the Secretary of State shall not be effective.

SEC. 42. Section 14106 of the Commercial Code is amended to read:

14106. (1) If a security interest is perfected or has priority on January 1, 1976, as to all persons or as to certain persons without

any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under this code, as amended by the Legislature at the 1973-74 Regular Session, the perfection and priority rights of the security interest continue until January 1, 1979. The perfection will then lapse unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected on January 1, 1976, under a law other than this code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse January 1, 1979, unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing, or unless under Section 9311 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by this code as amended by the Legislature at the 1973-74 Regular Session which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for a further filing, refiling, or recording unless a financing statement is filed as provided in subdivision (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by this code as amended by the Legislature at the 1973-74 Regular Session), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect thereto, and the filing number, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under this code or under any statute or other law repealed or modified by this code as amended by the Legislature at the 1973-74 Regular Session is still effective. Section 9501 and Sections 9301, 9303, 9304, 9305, 9306, 9307, 9316, and 9337 determine the proper place to file such a financing statement. Except as specified in this subdivision, the provisions of Sections 9515 and 9522 for continuation statements apply to such a financing statement.

SEC. 42.5. Section 911 of the Family Code is amended to read:

911. (a) The earnings of a married person during marriage are not



liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are uncommingled with other property in the community estate, except property insignificant in amount.

(b) As used in this section:

(1) "Deposit account" has the meaning prescribed in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

(2) "Earnings" means compensation for personal services performed, whether as an employee or otherwise.

SEC. 43. Section 22337 of the Financial Code is amended to read:

22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of two years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel

or plainly mark "paid" and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image reproduction thereof, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Sections 9512 and 9513 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9501 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement, assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

SEC. 43.1. Section 21855 of the Food and Agricultural Code is amended to read:

21855. Notwithstanding any other provision of law, in any action for the wrongful taking, possessing, harboring, or transporting of cattle, for the driving of cattle off their usual range, or for the killing or slaughter of cattle without the consent of the owner or the person lawfully in possession of such cattle, the detriment caused thereby to the plaintiff shall be four times the value of the cattle at the time of the taking, possessing, harboring, transporting, or driving, or killing or slaughtering thereof, with

interest from that time, plus an amount in fair compensation for the time and money properly expended by the plaintiff in pursuit of the cattle.

The provisions of this section shall not apply to a secured party, as defined in paragraph (72) of subdivision (a) of Section 9102 of the Commercial Code, when taking possession of cattle pursuant to a security agreement if one of the following conditions has been met prior to movement of any such cattle:

(a) The secured party has requested and received a brand inspection of the cattle covered by the security agreement pursuant to Sections 21051.5 and 21171 of this code.

(b) The secured party has requested the inspection required by subdivision (a) and due to an insufficient amount of time to inspect the cattle prior to their movement, the brand inspector agrees to allow movement of the cattle, with inspection of such cattle to be made at their first destination prior to their commingling with any other cattle.

The inspection performed pursuant to subdivision (a) or (b) shall be conducted for the sole purpose of assuring that the cattle that are moved are the same cattle subject to the security agreement.

In a proper case, which shall include the killing or slaughter of cattle, exemplary damages may be awarded to the plaintiff as provided in Section 3340 of the Civil Code.

The commencement of any criminal prosecution for grand theft of cattle shall not preclude or prevent the commencement of any civil action for damages, as specified in this section.

SEC. 43.2. Section 55702 of the Food and Agricultural Code is amended to read:

55702. (a) Except as otherwise provided in this section, any person who sells or furnishes livestock to a meatpacker, shall have a lien, not dependent upon possession, on such livestock and upon the identifiable proceeds and products thereof, for the unpaid part of the purchase price, or for the unpaid value of the livestock at the time of the transfer of possession if no purchase price has been agreed upon. The lien shall commence on the date of the transfer of possession of the livestock to the meatpacker and shall have priority over all other liens upon, and security interests in, the livestock and the identifiable proceeds and products thereof, without regard to the time of attachment or perfection of such other liens or security interests and shall remain a lien upon the livestock and the identifiable proceeds and products thereof notwithstanding sale, exchange, or other disposition thereof.

(b) Notwithstanding the provisions of subdivision (a), a buyer in the ordinary course of business, as that term is defined in

subdivision (9) of Section 1201 of the Commercial Code, shall take free of such lien even though such buyer knows of the existence of such lien.

(c) Notwithstanding the provisions of subdivision (a), such lien shall cease to be of any force or effect after the expiration of 21 days from the date of delivery of the livestock unless a notice of lien is filed pursuant to subdivision (e), in which case the lien shall remain effective as long as such notice shall remain effective.

(d) No person shall have a lien pursuant to subdivision (a) to the extent that such person shall have made the livestock available to the meatpacker on credit terms.

(e) Any person selling or delivering livestock who claims a lien under this article shall file a statement with the Secretary of State and a copy thereof with the director both, within 21 days after delivery of the livestock to the meatpacker. The statement shall be in writing, verified by the oath of the person filing, and shall contain all of the following:

(1) The name and address of the person filing.

(2) A statement of the amount demanded by the person filing the statement after deducting all credits and offsets.

(3) The name and address of the meatpacker who received the livestock.

(4) A description of the livestock delivered to the meatpacker and the date of delivery.

(5) A statement that the amount claimed is a true and bona fide existing debt as of the date of the statement.

(6) A statement that the amount claimed is a true and bona fide existing debt as of the date on which payment was due for the livestock.

(f) Every statement which is filed shall be accompanied by the fees required by Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code in the case of a financing statement not on the standard form and shall remain effective for a period of five years from the date of filing.

SEC. 43.3. Section 57405 of the Food and Agricultural Code is amended to read:

57405. The lien created by this chapter shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State pursuant to all the provisions of this section.

(a) The person who provides feed or materials may, at any time, file in the manner and at the place set forth in this section, the notice of claim of lien.

(b) The notice of claim of lien shall, at a minimum, set forth all of the following information:

(1) The name and address of the lien claimant.

(2) The name and address of the lien debtor.

(3) The location of the dairy to which the feed and materials were provided.

(4) That the lien claimant has a dairy cattle supply lien pursuant to Section 57402.

(c) The notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

(d) The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9521 of the Commercial Code. The standard form shall be completed with the following changes:

(1) The lien claimant may be identified either as lien claimant or as secured party.

(2) The form shall be signed by the lien claimant and need not be signed by the debtor.

(3) In the space for the description of the collateral there shall instead be entered the statement substantially as set forth in paragraphs (3) and (4) of subdivision (b).

(e) The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9519 of the Commercial Code.

(f) The lien claimant shall provide written notice of the claim of lien to the lien debtor within 10 days of the date of the filing with the office of the Secretary of State.

(g) For the purpose of the Secretary of State's index pursuant to Sections 9515, 9516, and 9522 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9519 or 9528 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this section as a financing statement.

SEC. 43.4. Section 57408 of the Food and Agricultural Code is amended to read:

57408. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder therein. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9525 of the Commercial Code.

SEC. 43.5. Section 57409 of the Food and Agricultural Code is

amended to read:

57409. A member of the public may obtain a copy of any notice of claim of lien filed pursuant to this chapter, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9525 of the Commercial Code.

SEC. 43.6. Section 57411 of the Food and Agricultural Code is amended to read:

57411. A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement. A lienholder's statement of assignment or transfer shall be filed with the Secretary of State in the same manner as a secured party's statement of assignment or transfer as prescribed in Section 9514 of the Commercial Code.

SEC. 43.7. Section 57516 of the Food and Agricultural Code is amended to read:

57516. The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9521 of the Commercial Code. The standard form shall be completed with the following changes:

(a) The lien claimant may be identified either as a lien claimant or as a secured party.

(b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.

(c) In the space for the description of the collateral there shall instead be entered the information specified in subdivisions (c) and (d) of Section 57514.

SEC. 43.8. Section 57517 of the Food and Agricultural Code is amended to read:

57517. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9519 of the Commercial Code.

SEC. 43.9. Section 57519 of the Food and Agricultural Code is amended to read:

57519. For the purpose of the Secretary of State's index pursuant to Section 9519 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9519 or 9528 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

SEC. 44. Section 57530 of the Food and Agricultural Code is amended to read:

57530. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim

of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder therein. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9525 of the Commercial Code.

SEC. 44.1. Section 57531 of the Food and Agricultural Code is amended to read:

57531. A member of the public may obtain a copy of any notice of claim of lien filed pursuant to this chapter, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9525 of the Commercial Code.

SEC. 44.2. Section 57540 of the Food and Agricultural Code is amended to read:

57540. A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement. The lienholder shall file a statement of assignment or transfer with the Secretary of State in the same manner as a secured party's statement of assignment or transfer as prescribed in Section 9514 of the Commercial Code.

SEC. 44.3. Section 57567 of the Food and Agricultural Code is amended to read:

57567. The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Sections 9515, 9516, and 9522 of the Commercial Code. The standard form shall be completed with the following changes:

(a) The lien claimant may be identified either as a lien claimant or as a secured party.

(b) The form shall be signed by the lien claimant and need not be signed by the lien debtor.

(c) In the space for the description of the collateral there shall instead be entered the information specified in subdivisions (c) to (g), inclusive, of Section 57565.

(d) Attached to the form shall be a separately signed statement containing the information specified in subdivision (f) of Section 57565.

SEC. 44.4. Section 57568 of the Food and Agricultural Code is amended to read:

57568. The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9519 of the Commercial Code.

SEC. 44.5. Section 57570 of the Food and Agricultural Code is amended to read:

57570. For the purpose of the Secretary of State's index pursuant to Section 9519 of the Commercial Code and for the purpose of the issuance of a certificate pursuant to Section 9519 or 9528 of the Commercial Code, the Secretary of State shall identify a notice pursuant to this article as a financing statement.

SEC. 44.6. Section 57581 of the Food and Agricultural Code is amended to read:

57581. A member of the public may obtain a certificate identifying whether there is a lien on file and any notice of claim of lien naming a particular debtor, and if so, giving the date and time of filing of each notice, and the names and addresses of each lienholder in the certificate. The fee for the certificate is the same as the fee for a certificate issued pursuant to Section 9525 of the Commercial Code.

SEC. 44.7. Section 57582 of the Food and Agricultural Code is amended to read:

57582. A member of the public may obtain a copy of any notice of an agricultural chemical or seed lien filed, including notices affecting the notices. The fee for these copies shall be the same as that prescribed in Section 9525 of the Commercial Code.

SEC. 44.8. Section 57590 of the Food and Agricultural Code is amended to read:

57590. (a) A lien created pursuant to this chapter is assignable or transferable by the holder of the lien, with full rights of enforcement.

(b) The lienholder shall file a statement of assignment or transfer with the office of the Secretary of State in the same manner that a statement is filed pursuant to Section 9514 of the Commercial Code.

SEC.

44.9. Section 7153 of the Government Code is amended to read:

7153. "Chattel paper" has the same meaning as defined in paragraph (11) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 45. Section 7154 of the Government Code is amended to read:

7154. "Deposit account" has the same meaning as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 45.1. Section 7157 of the Government Code is amended to read:

7157. "Instrument" has the same meaning as defined in paragraph (47) of subdivision (a) of Section 9102 of the Commercial Code.

SEC. 45.2. Section 7159 of the Government Code is amended to read:



7159. "Purchase money security interest" has the same meaning as defined in Section 9103 of the Commercial Code.

SEC. 45.3. Section 7170 of the Government Code is amended to read:

7170. (a) Except as provided in subdivisions (b) and (c), a state tax lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property, belonging to the taxpayer and located in this state. A state tax lien attaches to a dwelling notwithstanding the prior recording of a homestead declaration (as defined in Section 704.910 of the Code of Civil Procedure).

(b) A state tax lien is not valid as to real property against the right, title, or interest of any of the following persons where the person's right, title, or interest was acquired or perfected prior to recording of the notice of state tax lien in the office of the county recorder of the county in which the real property is located pursuant to Section 7171:

(1) A successor in interest of the taxpayer without knowledge of the lien.

(2) A holder of a security interest.

(3) A mechanic's lienor.

(4) A judgment lien creditor.

(c) A state tax lien is not valid as to personal property against:

(1) The holder of a security interest in the property whose interest is perfected pursuant to Section 9308 of the Commercial Code prior to the time the notice of the state tax lien is filed with the Secretary of State pursuant to Section 7171.

(2) Any person (other than the taxpayer) who acquires an interest in the property under the law of this state without knowledge of the lien or who perfects an interest in accordance with the law of this state prior to the time that the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

(3) A buyer in ordinary course of business who, under Section 9320 of the Commercial Code, would take free of a security interest created by the seller.

(4) Any person (other than the taxpayer) who, notwithstanding the prior filing of the notice of the state tax lien:

(A) Is a holder in due course of a negotiable instrument.

(B) Is a holder to whom a negotiable document of title has been duly negotiated.

(C) Is a protected purchaser of a security or is a person entitled to the benefits of Section 8502 or 8510 of the Commercial Code.

(D) Is a purchaser of chattel paper who gives new value and takes possession of the chattel paper in the ordinary course of the purchaser's business or a purchaser of an instrument who gives value and takes possession of the instrument in good faith.

(E) Is a holder of a purchase money security interest.

(F) Is a collecting bank holding a security interest in items being collected, accompanying documents and proceeds, pursuant to Section 4210 of the Commercial Code.

(G) Acquires a security interest in a deposit account or in the beneficial interest in a trust or estate.

(H) Acquires any right or interest in letters of credit, advices of credit, or money.

(I) Acquires without actual knowledge of the state tax lien a security interest in or a claim in or under any policy of insurance including unearned premiums.

(J) Acquires any right or interest in property subject to a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate of title is required as a condition of perfection of the security interest.

(K) Is a purchaser of an instrument who would have priority under subdivision (d) of Section 9330 of the Commercial Code.

(L) Is a purchaser of investment property who would have priority under paragraph (1), (3), (4), or (5) of Section 9328 of the Commercial Code.

(M) A transferee of money who would take free of a security interest under Section 9332 of the Commercial Code.

(5) A judgment lien creditor whose lien was created by the filing of a notice of judgment lien on personal property with the Secretary of State prior to the time the notice of state tax lien is filed with the Secretary of State pursuant to Section 7171.

SEC. 45.4. Section 7222 of the Government Code is amended to read:

7222. The Secretary of State shall cause the notice to be marked, held and indexed in accordance with the provisions of Section 9519 of the Uniform Commercial Code as if the notice were a financing statement within the meaning of that code.

SEC. 45.5. Section 7226 of the Government Code is amended to read:

7226. (a) Upon request of any person, the Secretary of State shall issue his or her certificate showing whether there is on file, on the date and hour stated therein, any certificate or notice of state tax lien naming a particular person, and if a certificate or notice is on file, giving the date and hour of filing of each certificate or notice.

(b) Upon request, the Secretary of State shall furnish a copy of any certificate or notice filed pursuant to this chapter. The certificate shall be issued as part of a combined certificate pursuant to Section 9528 of the Commercial Code, and the fee for the certificate and copies shall be in accordance with that section.

SEC. 46. Section 14735 of the Government Code is amended to read:

14735. Upon being directed by the Controller to sell a residential dwelling pursuant to Section 16201, the department shall sell the residential dwelling in the manner prescribed and in accordance with the procedure established in Chapter 7 (commencing with Section 3201) of Part 5 of Division 1 of the Revenue and Taxation Code, or if applicable, in the manner prescribed and in accordance with the procedures established in Chapter 6 (commencing with Section 9601) of Division 9 of the Commercial Code.

SEC. 46.1. Section 16201 of the Government Code is amended to read:

16201. If the Controller, by reason of the notice described in Section 3375 of the Revenue and Taxation Code or by reason of information from any other source, determines that all amounts owing under Article 1 (commencing with Section 16180) of this chapter have become due and payable pursuant to Section 16190, the Controller may, in addition to the options provided in Section 16200, take any of the following actions which will best serve the interest of the state:

(a) The Controller may demand payment of such amount from any person liable therefor.

(b) If the Controller has reasonable cause to believe that sale of the property will not satisfy the amount secured by the state's lien, the Controller may file a claim against the estate of any decedent whose property is liable for such amount or the Controller may request the Attorney General to bring an action under Section 2931c of the Civil Code to recover the amount of the state's lien.

(c) The Controller may direct the Department of General Services to sell such property pursuant to Chapter 4.5 (commencing with Section 14735) of Part 5.5 of Division 3 of this title or, if applicable, Division 9 (commencing with Section 9101) of the Commercial Code.

SEC. 46.2. Section 27282 of the Government Code is amended to read:

27282. (a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court

in which the judgment was rendered.

(2) A notice of location of mining claim.

(3) Certificates of amounts of taxes, interest and penalties due, notices of state tax liens and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.3, 2191.4, and 11495 of the Revenue and Taxation Code, and releases, partial releases, and subordinations executed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.4, 11496, 14307, and 14308 of the Revenue and Taxation Code.

(4) Notices of lien for postponed property taxes executed pursuant to Section 16182.

(5) A release, discharge, or subordination of a lien for postponed property taxes as authorized by Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2.

(6) A fixture filing as defined by paragraph (40) of subdivision (a) of Section 9102 of the Commercial Code.

(7) An order affecting title to or possession of real property issued by a court in an action subject to Section 12527, authenticated by the certificate of the clerk of the court in which the order was issued or a copy of that order authenticated by a declaration under penalty of perjury by the Attorney General or by an assistant or deputy of the Attorney General attesting that the contents of the copy are the same as the original order issued by the court.

(8) A court certified copy of a satisfaction of judgment.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

SEC. 46.3. Section 54985 of the Government Code is amended to read:

54985. (a) Notwithstanding any other provision of law that prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county, a county service area, or a county waterworks district governed by a county board of supervisors, a county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. The fee or charge may reflect the average cost of providing any product or service or enforcing any regulation. Indirect costs

that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87 on January 1, 1984.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the board of supervisors may request the county auditor to conduct a study and to determine whether the fee or charge is reasonable.

Nothing in this subdivision shall be construed to mean that the county shall not continue to be subject to fee review procedures required by Article XIII B of the California Constitution.

(c) This chapter shall not apply to any of the following:

(1) Any fee charged or collected by a court clerk pursuant to Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830, 72054, 72055, 72056, 72059, 72060, or 72061 of the Government Code or Section 103470 of the Health and Safety Code, and any other fee or charge that may be assessed, charged, collected, or levied, pursuant to law for filing judicial documents or for other judicial functions.

(2) Any fees charged or collected pursuant to Chapter 2 (commencing with Section 6100) of Division 7 of Title 1.

(3) Any standby or availability assessment or charge.

(4) Any fee charged or collected by a county agricultural commissioner.

(5) Any fee charged or collected pursuant to Article 2.1 (commencing with Section 12240) of Chapter 2 of Division 5 of the Business and Professions Code.

(6) Any fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, or providing a copy of any document pursuant to Section 2103 of the Code of Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3, 27361.4, 27361.8, 27364, 27365, or 27366 of the Government Code, Section 103625 of the Health and Safety Code, or Section 9525 of the Uniform Commercial Code.

(7) Any fee charged or collected pursuant to Article 7 (commencing with Section 26720) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code.

SEC. 47. Section 18035 of the Health and Safety Code is amended to read:

18035. (a) (1) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document

evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. Checks, money orders, or similar payments toward the purchase shall be made payable only to the escrow agent.

(2) The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within five working days of receipt, one of which shall be the day of receipt.

(3) For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrow holder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrow holder.

(b) For every transaction by or through a dealer to sell or lease with the option to buy a new manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) (A) That, in the alternative, either of the following shall occur:

(i) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(ii) The inventory creditor shall consent in writing to other than full payment.

(B) For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured

home or mobilehome, as contemplated by Section 9103 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide:

(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current certificate of title shall be appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall do either of the following:

(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

(B) Advise the escrow agent in writing that the new buyer or the buyer's stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at

or before the close of escrow.

(d) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part:

(1) The dealer shall present the buyer's offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form that reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon receipt of notification from the dealer that the seller has accepted the buyer's offer to purchase and receipt of mutually endorsed escrow instructions, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.

(ii) The creditor's release or transfer of the lien in the manufactured home or mobilehome contingent upon the satisfaction of those conditions.

(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

(i) A statement of the creditor's belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

(ii) The creditor's approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.



(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of title in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor's copy of the current registration card in an unexecuted form shall accompany the documents.

(5) If either of the following events occur, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of title or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

(A) The conditions required in order for the creditor to release or transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).

(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars (\$300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars (\$300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

(e) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the escrow instructions shall specify one of the following:

(1) Upon the buyer receiving delivery of an installed manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the

manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed. If mutually agreed upon between buyer and dealer, the escrow instructions may specify that funds be disbursed to a government agency for the payment of fees and permits required as a precondition for an installation acceptance or certificate of occupancy, and the information that may be acceptable to the escrow agent.

(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents, all funds in the escrow account, other than escrow fees, shall be disbursed.

(f) In the event any dispute arises between the parties to the escrow and upon notification in writing to the escrow agent, unless otherwise specified in the escrow instructions, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate.

(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller has more than a 5 percent ownership interest.

(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

(j) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome that is subject to inspection pursuant to Section 18613, and for which it is stated, on the face of the document certifying or approving occupancy or installation, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of

the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

(k) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(l) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

(m) Upon opening escrow on a used manufactured home or mobilehome which is subject to local property taxation, and subject to registration under this part, the escrow officer may forward to the tax collector of the county in which the used manufactured home or mobilehome is located, a written demand for a tax clearance certificate, if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the office of the Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed which has a final due date of at least 30 days beyond the date of issuance.

(2) If the tax collector on which the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts may be accepted by the department in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the transfer of ownership may be completed.

(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown

on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

(n) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars (\$2,000). In addition, attorney's fees and court costs shall also be awarded a plaintiff who prevails in the action.

SEC. 48. Section 18035.2 of the Health and Safety Code is amended to read:

18035.2. (a) For every sale by a dealer of a new or used manufactured home or mobilehome to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase, and provide a statement of fact complying with subdivision (b) of Section 18035.1, contemporaneous with or prior to the receipt of any cash or cash equivalent from the buyer and shall establish an escrow account with an escrow agent. The escrow shall not be subject to Section 18035.

(b) For every sale by a dealer of a new manufactured home or mobilehome installed or to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) That the inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome as contemplated by Section 9103 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a new or used manufactured home

or mobilehome that is subject to inspection pursuant to subdivision (a) of Section 18551, and for which it is stated, on the face of the document certifying or approving occupancy, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 17620 of the Education Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

SEC. 49. Section 18037.5 of the Health and Safety Code is amended to read:

18037.5. (a) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is not inventory of a dealer, including the right to repossess the property, notwithstanding any contrary provisions in the security agreement or conditional sale contract or in any other agreement entered into prior to default, the secured party may foreclose its security interest only by satisfying the requirements of this section.

(1) Unless the registered owner of the manufactured home, mobilehome, truck camper, or floating home has abandoned the property or has voluntarily surrendered possession of the property to the foreclosing creditor, the foreclosing creditor shall deposit or cause to be deposited in the United States mail an envelope addressed to each registered owner as shown on the current registration of the manufactured home, mobilehome, truck camper, or floating home, registered or certified with postage prepaid, containing a notice in substantially the following form and in at least 10-point type, which notice shall be signed by the foreclosing creditor:

#### NOTICE OF DEFAULT

To: \_\_\_\_\_  
(names of all registered owners)

You (if the registered owner is not the person who is in default, substitute name of defaulting person(s)) are in default under the terms of the

\_\_\_\_\_  
(identify security agreement by title or caption and date)  
in that \_\_\_\_\_.

(describe default)

This default gives the creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development

under registration number(s)

\_\_\_\_\_, located at  
(give registration numbers(s))

\_\_\_\_\_  
(give location of property as shown on current registration)  
unless the default is promptly cured.

You may cure the default by \_\_\_\_\_  
(describe conditions

\_\_\_\_\_  
precedent to reinstatement required to cure default)  
or by entirely repaying the outstanding secured indebtedness on  
or before

\_\_\_\_\_  
(state final date available for cure, which date shall be no  
earlier than 45 days after mailing of the notice)  
To cure the default you may also be required to reimburse the  
creditor for its reasonable attorney's fees and legal expenses  
and for any other sums to which the creditor may have become  
entitled under the terms of your credit agreement after the  
date of this notice. You may entirely repay the outstanding  
obligation by paying the creditor

\_\_\_\_\_  
(state dollar amount required to obtain release of security  
interest, and if the amount may increase due to passage of  
time, state that fact)  
plus any amount necessary to reimburse the creditor for its  
reasonable attorney's fees and legal expenses and any other  
sums to which the creditor may have become entitled after  
the date of this notice under the terms of your agreement.

(2) Within five days following the mailing of the notice of default required by paragraph (1), the foreclosing creditor shall forward a copy thereof to the legal owner shown on the current registration card, if different than the foreclosing creditor, and to each junior lienholder shown on the current registration card, if different than the foreclosing creditor, and, effective July 1, 1985, to the department. The notice shall be forwarded to each party in the same manner as provided for mailing the original notice to the

registered owner.

(3) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home, each registered owner and each junior lienholder having a security interest which is subordinate to the security interest of the foreclosing creditor shall have the right to cure the default by the methods and in the manner prescribed in the notice within 45 days after mailing of the notice to the registered owner required by paragraph (1).

(4) If the default is not cured within the time indicated on the notice required by paragraph (1), or if the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor, the creditor may proceed to sell the property at private or public sale pursuant to the provisions of Section 9610 of the Commercial Code, except as provided in paragraph (5) and subdivision (c). The notice of sale required by Sections 9610, 9611, 9617, 9618, and 9624 of the Commercial Code shall not be mailed or delivered before expiration of the period for the right to cure the default, as stated in the notice required by paragraph (1), unless the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor.

(5) Notwithstanding any contrary provisions of Sections 9610, 9611, 9615, 9617, 9618, and 9624 of the Commercial Code, the foreclosing creditor shall deposit or cause to be deposited in the United States mail, registered or certified with postage prepaid, an envelope containing the notice of sale addressed to each party to whom the notice of default was mailed pursuant to paragraph (2). The notice of sale shall be given at least 10 days before the date fixed for a public sale or on or after which any private sale is to be made.

(6) For purposes of this subdivision, a manufactured home, mobilehome, truck camper, or floating home shall be deemed abandoned if the foreclosing creditor gives written notice of its belief of abandonment to the registered owner as provided in this paragraph and the registered owner fails to give the foreclosing creditor written notice, prior to the appropriate date specified in the foreclosing creditor's notice, stating that the registered owner has not abandoned and does not intend to abandon the manufactured home, mobilehome, truck camper, or floating home and stating an address at which the registered owner may be served by certified mail with a summons in connection with any legal action which the foreclosing

creditor may appropriately initiate. The foreclosing creditor may give a notice of belief of abandonment only where it reasonably believes that the registered owner has abandoned the manufactured home, mobilehome, truck camper, or floating home. The notice of belief of abandonment shall be personally delivered to the registered owner or sent by registered or certified mail, with postage prepaid, to the registered owner at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by the registered owner, to any other address, if any, known to the foreclosing creditor where the registered owner may reasonably be expected to receive the notice. The notice of belief of abandonment shall be in substantially the following form in at least 10-point type:

NOTICE OF BELIEF OF ABANDONMENT

To:

---

(names of all registered owners)

This notice is given pursuant to Section 18037.5 of the Health and Safety Code concerning your manufactured home, mobilehome, truck camper, or floating home located at

---

\_\_\_\_\_.  
(address of manufactured home, mobilehome, truck camper, or floating  
home as shown on current registration)

You

---

(if the registered owner is not the person who is in  
default, substitute name of defaulting person(s))  
are in default under the terms of the

---

\_\_\_\_\_  
(identify security agreement or conditional sale contract by  
title

or caption and date)  
in that \_\_\_\_\_.

(describe default)

This default gives the foreclosing creditor named below the right to  
sell your manufactured home, mobilehome, truck camper, or floating



home  
which is registered with the Department of Housing and Community  
Development under number(s)

---

\_\_\_\_\_  
(give registration number(s))  
unless the default is promptly cured. Unless the foreclosing  
creditor  
receives a written notice from you to the contrary by

---

\_\_\_\_\_,  
(insert a date not less than 15 days after this notice is served  
personally or, if mailed, not less than 18 days after this notice  
is deposited in the mail)  
your manufactured home, mobilehome, truck camper, or floating home  
will be deemed abandoned, which means that the foreclosing creditor  
may  
sell your manufactured home, mobilehome, truck camper, or floating  
home  
sooner than would otherwise be permitted by law. The written notice  
you  
must send to the foreclosing creditor shall be sent to

---

\_\_\_\_\_  
(address of foreclosing creditor)  
and shall state both of the following:  
1. Your intent not to abandon the manufactured home, mobilehome,  
truck  
camper, or floating home.  
2. An address at which you may be served by certified mail with a  
summons in connection with any legal action which the foreclosing  
creditor  
may appropriately initiate.

\_\_\_\_\_  
(name of foreclosing creditor)

\_\_\_\_\_  
(signature of foreclosing  
creditor)

(b) In the event of default under the provisions of any security

agreement relating to a loan or a conditional sale contract in which the collateral is a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach, the secured party may repossess and dispose of the collateral in accordance with the provisions of the security agreement or conditional sale contract and applicable law, including the provisions of Division 9 (commencing with Section 9101) of the Commercial Code. Upon repossession of a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach subject to registration under this part, the secured creditor shall prepare and forward to the department a notice of repossession on the form prescribed by the department.

(c) The proceeds of the sale of a manufactured home, mobilehome, commercial coach, truck camper, or floating home shall be applied, in the following order, to:

(1) The reasonable and necessary expenses incurred for preparing for and conducting the sale and, if the foreclosing creditor has obtained possession of the collateral prior to the disposition, the reasonable and necessary expenses for the retaking and holding of the collateral and to the extent provided for in the agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the foreclosing creditor in retaking the property from any person not a party to the credit contract.

(2) The satisfaction of the indebtedness secured by the security interest of the foreclosing creditor under which the disposition is made.

(3) The satisfaction of indebtedness secured by any subordinate liens or encumbrances on the property in the order of their priority as provided in Section 18105, if with respect to a junior creditor written notification of demand therefor is received before distribution of the proceeds is completed, and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the foreclosing creditor, the holder of a subordinate lien or encumbrance shall furnish reasonable proof of his or her interest, and unless it does so, the foreclosing creditor need not comply with its demand.

(4) The satisfaction of indebtedness secured by all senior liens or encumbrances in the order of their priority as provided in Section 18105, if with respect to a senior creditor written demand therefor is received by the foreclosing creditor before distribution of the proceeds is completed. If requested by the foreclosing creditor, the

holder of a senior lien or encumbrance shall furnish reasonable proof of his or her interest, and unless he or she does so, the foreclosing creditor need not comply with his or her demand.

(5) To the registered owner within 45 days after the sale is conducted if a surplus remains.

(d) Unless automatically provided to the registered owner within 45 days after the sale of a manufactured home, mobilehome, truck camper, or floating home if a request for an accounting is made within one year of the sale, the foreclosing creditor shall provide to the registered owner a written accounting containing the gross sales proceeds and its allocation pursuant to subdivision (c). In the event any surplus is paid to the registered owner pursuant to paragraph (5) of subdivision (c), the foreclosing creditor shall furnish such an accounting whether or not requested by the registered owner.

SEC. 50. Section 18080.7 of the Health and Safety Code is amended to read:

18080.7. (a) Each person acquiring or retaining a security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part, unless the collateral is inventory, shall forward or cause to be forwarded to the department the application for original registration contemplated by Section 18085 with respect to a security interest acquired or retained at or before original registration, or the certificate of title or current registration card with appropriate insertions and signatures as respectively contemplated by Section 18100.5 with respect to a security interest acquired or retained at a time subsequent to original registration, together with the filing fee prescribed by department regulations.

(b) A security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part, unless the collateral is inventory, is perfected when it has attached as contemplated by subdivision (a) and by subdivision (a) of Section 9203 of the Commercial Code and when the department has received the items required by subdivision (a), whichever occurs later, except as otherwise provided by Section 9313 of the Commercial Code. The department may adopt regulations authorizing its acceptance of a statement of lien by means of electronic facsimile. If the department adopts these regulations, a security interest may also be perfected when it has attached and when the department has received the electronic facsimile, whichever occurs later, subject to the receipt by the department of the items required by subdivision (a), other than the fee, within 10 days of the date of its receipt of the electronic facsimile, provided that

the fee required by subdivision (a) is paid in a timely fashion pursuant to these regulations.

(c) Except as otherwise provided in subdivision (b) of Section 18100.5, upon receipt of the items required by subdivision (a), the department shall establish or amend the permanent title record of the manufactured home, mobilehome, commercial coach, truck camper, or floating home to reflect the interest of the secured party as of that date or, if within the preceding 10-day period the department has received an electronic facsimile of the statement of lien, as of the date of receipt of the electronic facsimile, provided that the fee required by subdivision (a) is paid in a timely fashion and the department actually receives the statement of lien within 10 days of its receipt of the electronic facsimile.

(d) Upon establishing or amending the permanent title record, the department shall issue to the registered owner a current registration card indicating the interest of the secured party and shall forward a copy of that registration card to all persons holding a record security interest in the manufactured home, mobilehome, commercial coach, truck camper, or floating home.

(e) Except as otherwise provided in subdivision (b) of Section 18100.5, the department shall not refuse to establish or amend the permanent title record to indicate a security interest which is authorized by law to be recorded and which would otherwise satisfy statutory requirements for departmental documentation and recordation on the basis of lack of knowledge as to the attachment of the security interest prior to its receipt of the statement of lien or an electronic facsimile thereof.

(f) The department shall designate the holder of a perfected security interest as either the legal owner or a junior lienholder as provided in this article, Article 3 (commencing with Section 18085), or Article 4 (commencing with Section 18098), as applicable.

(g) The failure of a secured party to perfect a security interest for which there has been attachment shall not impair or affect in any way its enforceability against the registered owner or debtor with respect to the manufactured home, mobilehome, commercial coach, truck camper, or floating home.

(h) Except as otherwise provided in this part, a security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration with the department is governed by Division 9 (commencing with Section 9101) of the Commercial Code.

SEC. 51. Section 18093 of the Health and Safety Code is amended to read:

18093. (a) At the time of release of a new manufactured home,

mobilehome, or commercial coach to any person, the manufacturer shall prepare a certificate of origin, in quadruplicate, on numbered forms prepared by the department which shall contain all of the following:

- (1) The name and address of the manufacturer or fabricator.
- (2) The manufacturer's identification number.
- (3) The trade name of the manufactured home, mobilehome, or commercial coach.
- (4) The model name or number of the manufactured home, mobilehome, or commercial coach.
- (5) The shipping weight of the unit or separate sections of the unit in the case of multisection manufactured homes, mobilehomes, or commercial coaches.
- (6) The length and width of the unit or separate sections of the unit in the case of multisection manufactured homes, mobilehomes, or commercial coaches.
- (7) The serial number of the unit or separate sections of the unit in the case of multisection manufactured homes, mobilehomes, or commercial coaches.
- (8) The date of manufacture.
- (9) The United States Department of Housing and Urban Development label number or department insignia number affixed to the unit or separate sections of the unit in the case of multisection manufactured homes, mobilehomes, or commercial coaches, as applicable.
- (10) The date that the ownership was transferred from the manufacturer or fabricator and to whom the ownership is transferred.

(11) A certification of facts signed by a responsible agent of the manufacturer or fabricator.

(12) The name and business address of any person known to the manufacturer or fabricator who, as to the purchaser, has a purchase money security interest in the manufactured home, mobilehome, commercial coach, or truck camper as contemplated by Section 9103 of the Commercial Code.

(13) Any other information as the department may reasonably require.

(b) The manufacturer or fabricator shall forward the original and duplicate copies of the certificate of origin by first-class mail as follows:

(1) The original shall be forwarded to the purchase money creditor unless there is none in which event the original shall be forwarded to the purchaser.

(2) The first copy shall be forwarded to the department at the

address printed on the form.

(3) The second copy shall accompany the manufactured home, mobilehome, or commercial coach to its destination.

(4) The third copy shall be retained by the manufacturer or fabricator for its permanent records.

(c) The department may establish regulations for the distribution, maintenance, accessibility, and surrender of certificates of origin required by this section.

SEC. 52. Section 18105 of the Health and Safety Code is amended to read:

18105. (a) Except as otherwise provided in subdivision (e) or (g), the security interest of the legal owner has priority over conflicting security interests of junior lienholders and holders of security interests perfected pursuant to Sections 9306 and 9313 of the Commercial Code and of unperfected security interests in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part and its proceeds.

(b) Except as otherwise provided in subdivision (e) or (g), the security interest of a junior lienholder has priority over conflicting security interests of holders of security interests perfected pursuant to Section 9313 of the Commercial Code and of unperfected security interests in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part and its proceeds. Conflicting security interests of junior lienholders rank in the order designated on the permanent title record maintained by the department.

(c) Except as otherwise provided in subdivision (e) or (g), a security interest perfected pursuant to Section 9313 of the Commercial Code has priority over conflicting unperfected security interests in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part and its proceeds.

(d) Except as otherwise provided in subdivision (e) or (g), conflicting unperfected security interests in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part and its proceeds rank according to priority in time of attachment.

(e) (1) Except as otherwise provided in subdivision (g), the security interest of any secured party shall not have priority over any security interest of a party having a subordinate security interest by virtue of the preceding provisions of this section to the extent that the otherwise senior secured obligation was incurred subsequent to receipt by that creditor of actual or constructive

notice of the existence of the otherwise junior security interest unless the obligation arose pursuant to the terms of a security agreement for the purpose of preserving the collateral or protecting the interest of the senior secured party therein or unless the otherwise senior secured obligation was incurred under a binding agreement that the credit would be extended by that creditor.

(2) For purposes of this subdivision receipt of a copy of the registration certificate which reflects the existence of a security interest shall constitute constructive notice of the existence of the security interest. In interpreting the provisions of this subdivision but for no other purposes, it is the intent of the Legislature that the priorities among conflicting security interests be determined in accordance with the rules of law applicable to priority as to interests in real property.

(f) Except as otherwise provided in subdivision (g), the security interest of the legal owner or a junior lienholder has priority over a conflicting security interest of a holder of a perfected security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part which is inventory, including the proceeds of the inventory. The rules of priority regarding conflicting security interests of holders of a perfected security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part which is inventory and of holders of security interests perfected pursuant to Sections 9306 and 9313 of the Commercial Code or unperfected security interests in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part shall be governed by Sections 9322, 9323, 9324, and 9325 of the Commercial Code.

(g) If the holders of two or more of the several security interests shall otherwise agree among themselves, the relative priorities among the holders of security interests who have so agreed shall be determined according to this agreement.

SEC. 53. Section 18106 of the Health and Safety Code is amended to read:

18106. (a) As used in this section, "lien creditor" means a creditor who has acquired a lien on a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part by attachment, levy, or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition, or a receiver in equity from the time of appointment, as contemplated by Section 9102 of the Commercial Code.

(b) Except as provided in subdivision (c), an unperfected security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration under this part is subordinate to the rights of a person who becomes a lien creditor before the security interest is perfected.

(c) If a security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home becomes perfected as contemplated by subdivision (a) of Section 18080.7, the security interest is senior to the rights of a lien creditor which arise between the time the security interest attaches and the time of perfection.

(d) A person who becomes a lien creditor while a security interest in a manufactured home, mobilehome, commercial coach, truck camper, or floating home is perfected by any of the means contemplated by subdivision (b) of Section 18080.7 takes subject to the perfected security interest only to the extent that it secures advances either made before that person becomes a lien creditor or made thereafter which would otherwise be senior to a competing security interest as provided in subdivision (e) of Section 18105.

SEC. 53.1. Section 18122 of the Health and Safety Code is amended to read:

18122. Except as it may affect a security interest properly perfected other than pursuant to Section 9313 of the Commercial Code, the department may suspend, revoke, or cancel any certificate of title valid on its face for any violation of the provisions of this chapter relating to certificates of title. The department shall notify all persons or entities with perfected security interests at the time that such an action is taken.

SEC. 53.2. Section 504b of the Penal Code is amended to read:

504b. Where under the terms of a security agreement, as defined in paragraph (73) of subdivision (a) of Section 9102 of the Commercial Code, the debtor has the right to sell the property covered thereby and is to account to the secured party for, and pay to the secured party the indebtedness secured by the security agreement from, the proceeds of the sale of any of the property, and where the debtor, having sold the property covered by the security agreement and having received the proceeds of the sale, willfully and wrongfully, and with the intent to defraud, fails to pay to the secured party the amounts due under the security agreement, or the proceeds of the sale, whichever is the lesser amount, and appropriates the money to his or her own use, the debtor shall be guilty of embezzlement and shall be punishable as provided in Section 514.



SEC. 54. Section 538 of the Penal Code is amended to read:

538. Every person, who, after mortgaging any of the property permitted to be mortgaged by the provisions of Sections 9102 and 9109 of the Commercial Code, excepting locomotives, engines, rolling stock of a railroad, steamboat machinery in actual use, and vessels, during the existence of the mortgage, with intent to defraud the mortgagee, his or her representative or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situated when mortgaged, without the written consent of the mortgagee, or who sells, transfers, slaughters, destroys, or in any manner further encumbers the mortgaged property, or any part thereof, or causes it to be sold, transferred, slaughtered, destroyed, or further encumbered, is guilty of theft, and is punishable accordingly. In the case of a sale, transfer, or further encumbrance at or before the time of making the sale, transfer, or encumbrance, the mortgagor informs the person to whom the sale, transfer, or encumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer, or encumbrance is to be made.

SEC. 54.5. Section 574 of the Penal Code is amended to read:

574. As used in this chapter, the following terms have the following meanings:

(a) "Buyer" has the meaning set forth in subdivision (c) of Section 2981 of the Civil Code.

(b) "Conditional sale contract" has the meaning set forth in subdivision (a) of Section 2981 of the Civil Code. Notwithstanding subdivision (k) of Section 2981 of the Civil Code, "conditional sale contract" includes any contract for the sale or bailment of a motor vehicle between a buyer and a seller primarily for business or commercial purposes.

(c) "Direct loan agreement" means an agreement between a lender and a purchaser whereby the lender has advanced funds pursuant to a loan secured by the motor vehicle which the purchaser has purchased.

(d) "Lease contract" means a lease contract between a lessor and lessee as this term and these parties are defined in Section 2985.7 of the Civil Code. Notwithstanding subdivision (d) of Section 2985.7 of the Civil Code, "lease contract" includes a lease for business or commercial purposes.

(e) "Motor vehicle" means any vehicle required to be registered under the Vehicle Code.

(f) "Person" means an individual, company, firm, association, partnership, trust, corporation, limited liability company, or other legal entity.

(g) "Purchaser" has the meaning set forth in subdivision (33) of Section 1201 of the Commercial Code.

(h) "Security agreement" and "secured party" have the meanings set forth, respectively, in paragraphs (73) and (72) of subdivision (a) of Section 9102 of the Commercial Code. "Security interest" has the meaning set forth in subdivision (37) of Section 1201 of the Commercial Code.

(i) "Seller" has the meaning set forth in subdivision (b) of Section 2981 of the Civil Code, and includes the present holder of the conditional sale contract.

SEC. 55. Section 843 of the Public Utilities Code is amended to read:

843. (a) A security interest in transition property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed transition amounts included in the transition property.

(2) Value has been given by the pledgees of the transition property.

(3) The pledgor has signed a security agreement covering the transition property.

(b) A valid and enforceable security interest in transition property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the transition property as "debtor" and identifying the transition property. Any description of the transition property shall be sufficient if it refers to the financing order creating the transition property. A copy of the financing statement shall be filed with the commission by the electrical corporation that is the pledgor or transferor of the transition property, and the commission may require the electrical corporation to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in transition property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank

according to priority in time of perfection. Transition property shall constitute property for all purposes, including for contracts securing rate reduction bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(d) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the transition property with other funds of the electrical corporation that is the pledgor or transferor of the transition property, or by any security interest in a deposit account of that electrical corporation perfected under Division 9 (commencing with Section 9101) of the Commercial Code into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of Section 9311 of the Commercial Code, the pledgees of the transition property shall have a perfected security interest in all cash and deposit accounts of the electrical corporation in which revenues arising with respect to the transition property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the transition property received by the electrical corporation within 12 months before (1) any default under the security agreement or (2) the institution of insolvency proceedings by or against the electrical corporation, less payments from the revenues to the pledgees during that 12-month period.

(e) If an event of default occurs under the security agreement covering the transition property, the pledgees of the transition property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce their security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section. In addition, the commission may require, in the financing order creating the transition property, that, in the event of default by the electrical corporation in payment of revenues arising with respect to the transition property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 844, of the transition property, and without limiting any other remedies available to the pledgees or

transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the transition property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the transition property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the rate reduction bonds, and other costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

(f) Section 5451 of the Government Code shall not apply to any pledge of transition property by a financing entity. Sections 9204 and 9205 of the Commercial Code shall apply to a pledge of transition property by an electrical corporation, an affiliate of an electrical corporation, or a financing entity.

(g) This section sets forth the terms by which a consensual security interest can be created and perfected in the transition property. Unless otherwise ordered by the commission with respect to any series of rate reduction bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subdivision. Upon the effective date of the financing order, there shall exist a first priority lien on all transition property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the electrical corporation, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the rate reduction bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce this statutory lien in the transition property. This lien shall attach to the transition property regardless of who shall own, or shall subsequently be determined to own, the transition property including any electrical corporation, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the transition property and all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but shall not be required to, file a financing statement in

accordance with subdivision (b). Financing statements so filed may be "protective filings" and shall not be evidence of the ownership of the transition property.

A perfected statutory lien in transition property is a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting liens shall rank according to priority in time of perfection. Transition property shall constitute property for all purposes, including for contracts securing rate reduction bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

In addition, the commission may require, in the financing order creating the transition property, that, in the event of default by the electrical corporation in payment of revenues arising with respect to transition property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the transition property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the transition property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the rate reduction bonds, and other costs arising in connection with the documents governing the rate reduction bonds, shall be remitted to the debtor or to the pledgor or transferor.

SEC. 56. Section 844 of the Public Utilities Code is amended to read:

844. (a) A transfer of transition property by an electrical corporation to an affiliate or to a financing entity, or by an affiliate of an electrical corporation or a financing entity to another financing entity, which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the transition property, other than for federal and state income and franchise tax purposes. Granting to holders of rate reduction bonds a preferred right to revenues of the electrical corporation, or the provision by the company of other credit enhancement with respect to rate reduction bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(b) A transfer of transition property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed transition amounts included in the transition property.

(2) An assignment of the transition property in writing has been executed and delivered to the transferee.

(c) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the transition property as debtor and identifying the transition property has priority. Any description of the transition property shall be sufficient if it refers to the financing order creating the transition property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

SEC. 57. Section 6703 of the Revenue and Taxation Code is amended to read:

6703. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a retailer or other person liable for any amount under this part to withhold from such credits or other personal property the amount of any tax, interest, or penalties due from such retailer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at such times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the retailer or other person liable during the period of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of

Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the retailer or other person liable for the tax.

(3) Any other payments or credits due or becoming due the retailer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 58. Section 7855 of the Revenue and Taxation Code is amended to read:

7855. (a) The Controller may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or personal property belonging to a distributor or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the Controller at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of

both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 59. Section 8957 of the Revenue and Taxation Code is amended to read:

8957. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a user, vendor, or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that user, vendor, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the



notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the user, vendor, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the user, vendor, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 60. Section 11452 of the Revenue and Taxation Code is amended to read:

11452. (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a person as defined in this part who is liable for any amount under this part to withhold from those credits or other personal

property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the person liable during the period of the levy.

(d) For the purposes of this section, "payments" does not include earnings, as defined in subdivision (a) of Section 706.001 of the Code of Civil Procedure, or funds in a deposit account, as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. "Payments" does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, and mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the person liable for the tax.

(3) Any other payments or credits due or becoming due the person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 61. Section 18671 of the Revenue and Taxation Code is amended to read:

18671. (a) Subject to the limitations in subdivisions (b) and (c), the Franchise Tax Board, may, by notice, served personally or by first-class mail, require any person, officer, department of the state, or political subdivision or agency of the state including the Regents of the University of California, a city organized under a freeholder's charter, or a political body not a subdivision or agency of the state, to withhold the amount of any tax, interest, or

penalties due from a taxpayer, or the amount due from an employer or person who has failed to withhold and transmit amounts due pursuant to this article, from any payments due the taxpayer, employer, or person and from any payments becoming due the taxpayer, employer, or person after receipt of the notice. The amounts withheld shall be transmitted to the Franchise Tax Board at those times as it may designate.

(b) The effect of a levy made pursuant to subdivision (a) shall be continuous from the date the notice is received until the amount due stated on the notice has been withheld, until the notice has been withdrawn, or until one year after the date the notice is received, whichever occurs first.

(c) The amount required to be withheld pursuant to a notice issued under subdivision (a) is the lesser of the amount due stated on the notice, or either of the following:

(1) If the taxpayer, employer, or person is not a natural person, 100 percent of the amount of each payment due or becoming due the taxpayer, employer, or person during the period the levy is in effect as provided in subdivision (b).

(2) If the taxpayer, employer, or person is a natural person, 25 percent of the amount of each payment due or becoming due the taxpayer, employer, or person during the period the levy is in effect as provided in subdivision (b).

(d) For purposes of this section, the term "payments" does not include earnings as defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(2) Payments or credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(3) Any other payments or credits due or becoming due periodically as a result of an enforceable obligation to the taxpayer, employer, or person.

SEC. 62. Section 30315 of the Revenue and Taxation Code is amended to read:

30315. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a distributor, dealer, or other

person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor, dealer, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution

to receive the notice.

SEC. 63. Section 32387 of the Revenue and Taxation Code is amended to read:

32387. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written

or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 64. Section 38503 of the Revenue and Taxation Code is amended to read:

38503. (a) Subject to the limitations in subdivisions (b) and (c), the board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any credits or other personal property belonging to a timber owner liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that timber owner, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate.

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The amount of each payment due or becoming due to the timber owner during the period of the levy.

(d) For the purposes of this section, "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. "Payments" does include all of the following:

(1) Payments due for services for independent contractors, dividends, rents, royalties, residuals, patent rights, mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the timber owner liable for the tax.

(3) Any other payments or credits due or becoming due the timber owner as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or

otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 65. Section 40155 of the Revenue and Taxation Code is amended to read:

40155. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a consumer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the consumer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or

other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the consumer or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the consumer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the consumer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 66. Section 41123.5 of the Revenue and Taxation Code is amended to read:

41123.5. (a) The board may, by notice of levy served personally or by first-class mail, require all persons, other than a service supplier, having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a service user or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any surcharge, interest, or penalties due from the service user or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.



(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the service user or other person liable for the surcharge.

(3) Any other payments or credits due or becoming due the service user or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the service user and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 67. Section 43444.2 of the Revenue and Taxation Code is amended to read:

43444.2. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a taxpayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the taxpayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 68. Section 45605 of the Revenue and Taxation Code is amended to read:

45605. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the

notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 69. Section 46406 of the Revenue and Taxation Code is amended to read:

46406. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any fee, interest, or

penalties due from that feepayer or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 70. Section 50136 of the Revenue and Taxation Code is amended

to read:

50136. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 71. Section 55205 of the Revenue and Taxation Code is amended to read:

55205. (a) The board may, by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to the feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of the fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(c) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts

for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch office of the financial institution where the credits or other property are held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 72. Section 60407 of the Revenue and Taxation Code is amended to read:

60407. (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that person, or the amount of any liability incurred by him or her under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, "payment" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. "Payment" does include any of the following:

(1) Any payment due for services of an independent contractor, dividends, rents, royalties, residuals, patent rights, or mineral or

other natural rights.

(2) Any payment or credit due or becoming due periodically as the result of an enforceable obligation to the person liable for the tax.

(3) Any other payment or credit due or becoming due the person liable as the result of a written or oral contract for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

SEC. 73. Section 1755 of the Unemployment Insurance Code is amended to read:

1755. If any person or employing unit is delinquent in the payment of any contributions, penalties or interest provided for in this division, the director may, not later than three years after the payment became delinquent or within 10 years after the last entry of a judgment under Article 5 (commencing with Section 1815) or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, collect the delinquency or enforce any liens by levy served either personally or by certified mail, to all persons having in their possession or under their control any credits or personal property belonging to the delinquent person or employing unit, or owing any debts to the person or employing unit at the time of the receipt of the notice of levy or coming into their possession or under their control for the period of one year from the time of receipt of the notice of levy. Any person upon whom a levy has been served having in his or her possession or under his or her control any credits or personal property belonging to the delinquent person or employing unit or owing any debts to the person or employing unit at the time of the receipt of the levy or coming into his or her possession or under his or her control for the period of one year from the time of receipt of the notice of levy, shall surrender the credits or personal property to the director or pay to the director the amount of any debt owing the delinquent employer within five days of service of the levy, and shall surrender the credits or personal property, or the amount of any debt owing to the delinquent employer coming into his or her possession or under his or her control within one year of receipt of the notice of levy within five days of the date of coming into possession or control of the credits or personal property, or



the amount of any debt owing to the delinquent employer is incurred. Any person in possession of any credits or personal property or owing any debts to the delinquent person or employing unit who surrenders the credits or personal property or pays the debts owing the delinquent person or employing unit shall be discharged from any obligation or liability to the delinquent person or employing unit with respect to the credits or personal property surrendered or debts paid to the director. If the levy is made on a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the notice of levy shall be delivered or mailed to the branch or office of the bank or savings and loan association at which the deposit is carried or at which credits or personal property is held. If the levy is made on a bank or savings and loan association it will apply to all credits or personal property as provided in this section, except that it will apply to credits and personal property in a deposit account, as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code, only at the time the notice of levy is received by the bank or savings and loan association.

SEC. 74. The sum of one hundred twenty-eight thousand dollars (\$128,000) is appropriated from the Secretary of State's Business Fees Fund to the Secretary of State to implement this act.

SEC. 75. Sections 1 to 73, inclusive, of this act shall become operative on July 1, 2001.

SEC. 76. Any section of any act enacted by the Legislature during the 1999 calendar year that takes effect on or before January 1, 2000, and that amends, amends and renumbers, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, the enactment of this act.